

103
LAND EXCHANGE BETWEEN NATIONAL PARK
SERVICE/GETTYSBURG NATIONAL PARK
AND GETTYSBURG COLLEGE

Y 4.G 74/7:L 22/4

Land Exchange Between National Park...

HEARING
BEFORE THE
ENVIRONMENT, ENERGY, AND
NATURAL RESOURCES SUBCOMMITTEE
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

MAY 9, 1994

Printed for the use of the Committee on Government Operations



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LAND EXCHANGE BETWEEN NATIONAL PARK SERVICE/GETTYSBURG NATIONAL PARK AND GETTYSBURG COLLEGE

MONDAY, MAY 9, 1994

HOUSE OF REPRESENTATIVES,
ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2154, Rayburn House Office Building, Hon. Mike Synar (chairman of the subcommittee) presiding.

Present: Representative Mike Synar.

Also present: Sandra Z. Harris, staff director; Brian McLaughlin, professional staff member; Elisabeth R. Campbell, clerk; and Charli Coon, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. SYNAR. The subcommittee will come to order. We are here today to continue this subcommittee's ongoing examination of the intrastate land exchanges and similar discretionary transactions involving Federal resource agencies.

Today's hearing involves the National Park Services' exchange of land at Gettysburg National Military Park for a scenic easement over certain property owned by Gettysburg College. In recent years, this subcommittee has held two formal hearings on discretionary land exchanges. Several others are presently under investigation.

Today's review will demonstrate why we have continuing concerns about these transactions. First and foremost, park service and other resource agencies still do not have adequate or consistent policy guidelines and criteria for judging the merits of the exchanges.

As a result, the decisions about the public interests served by a particular exchange are made on a case-by-case basis and may be entirely too subjective. Moreover, these transactions do not consistently receive the internal or external scrutiny they deserve. They are not reviewed and approved by Congress, and too often public knowledge about these deals and input into the exchange process is limited.

In some cases, it may be virtually nonexistent. Because of the lack of meaningful criteria and vigorous scrutiny, there is always

concern about the agency's fidelity to the laws and regulations that govern exchanges of public resources.

Some, in my view, are outright abuses of the system. Now, lending urgency to our concern over these continuing problems is the fact that these kinds of transactions are becoming increasingly prevalent as Federal land acquisition dollars diminish and alternatives to outright land purchases may be pursued.

For all these reasons, we will continue to review these transactions and today we will review the Gettysburg exchange. In that 1990 exchange, the park service received a scenic easement over approximately 46 acres of property owned by Gettysburg College.

While it is true that the easement will restrict future development of that historically significant parcel, it is also true that the college had already graded and filled the land for athletic fields. In exchange for the easement, the park service gave Gettysburg College approximately 7½ acres of park land along the Seminary/Oak Ridge.

This land was adjacent to the college property, and also was the scene of fighting during the first day's battle, and seemingly of equal historical importance to the park and to the Nation. The exchange allowed the college to move some railroad tracks away from its campus and onto the former park land.

In moving that line, the constructing of a spur line, a substantial piece of Seminary/Oak Ridge was destroyed, and an almost vertical 30 foot cut in the ridge soon began to erode directly into the park property.

So why are we reviewing a land exchange that occurred 4 years ago? Well, Justice Frankfurter said it best, "Wisdom too often never comes, so one ought to not reject it merely because it comes late."

We have indeed found numerous problems in the way this exchange was undertaken and processed. We think the park service can gain some measure of wisdom by exploring this experience in detail. Moreover, despite the passage of 4 years, the erosion and other problems are still being addressed by the park service and the college, and we want to find out what is being done about these continuing problems and why they ever occurred in the first place.

In short, contrary to the expressed opinion of some involved in the exchange, the subcommittee's investigation of this 4-year-old transaction and its aftermath is not much ado about nothing. On top of that, we are dealing with Gettysburg, the crown jewel of this Nation's battlefield parks.

Remarkably, during the course of this investigation, some have questioned whether it is appropriate for the Nation to venerate the fields of our American soldiers where they had fallen in battle to protect the truths upon which this Nation is founded.

At Gettysburg, our Nation was put to one of its greatest tests. Tens of thousands of soldiers suffered at that place. This battle turned the tide of the Confederate victories, renewed the commitment to preserve the Union, and helped insure that a race of people would ultimately be freed from the shackles of slavery.

This summer America will pause to remember another battlefield, this one on the far away beaches of Normandy where 50 years ago American blood was spilled to free Europe from the bond-

age of Nazi fascism. The ultimate sacrifice paid by our soldiers is worth more than mere remembering. It is worth tangible evidence of our abiding commitment to the principles for which they fought and died.

In this Nation, that tangible evidence is in part the protection of America's great battlefield parks, not the least of which is the Gettysburg National Park. To paraphrase Chamberlain, the Union colonel who successfully defended Little Round Top:

In great deeds something abides, but on great fields something stays. Forms change and pass, bodies disappear, but spirits linger to consecrate ground for the vision-place of souls. Reverent men and women from afar and generations that know us not shall come to this deathless field to ponder where great things were suffered and done for them.

About 1 million visitors a year journey to Gettysburg Military Park to ponder the sacrifices made on that battlefield 131 years ago. We want to insure that the park service is diligent in its effort to preserve and conserve that battlefield and other parks in our national system for all generations to come.

On our first panel this morning are three of our distinguished Members and former Members of Congress who have a personal interest in this issue. At this time, I would call upon the Member whose district we are going to be talking about at great length today, Bill Goodling.

Gentlemen, as is the policy of the subcommittee, we will include the entirety of your remarks into the record, and at this time we would ask you to summarize within 5 minutes.

STATEMENT OF HON. WILLIAM F. GOODLING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GOODLING. Thank you, Mr. Chairman. Because you have asked us to summarize in 5 minutes, I will speak very rapidly in order to do that. During my first 16 years in the Congress and at least 14 years before that, I watched a very haphazard development of the Gettysburg National Military Park. Townships, boroughs, builders, farmers, no one could plan because they had no idea of what was going to be the next move.

When the Taney farm issue came to the Congress of the United States, I said enough is enough, now let's get a final written in stone boundary so that we know from this point on exactly what the park will include. I made only one request at that time, and that was when the study is done and the decisions are being made, to make sure that everybody in the district has an opportunity to testify, to meet, to hear, to discuss exactly what the study is going to entail.

When the study was completed, Chairman Vento and others toured the proposed additions and deletions, and the committee made a few changes. I only had two requests of people who were going to be affected, and they worked those out very well with the park service. Congressman Kostmayer and I introduced legislation which became law.

When it became law, I only had one request again, and that was to do easements wherever they could for that 1,900 acres so we could keep as much on the tax rolls as we possibly could. I only dealt personally with two areas.

One was a discussion by the country club and the park service about an exchange of land which never materialized. The only other area that I was involved in, and which I would like to forget, was that over the auction house which cost me dearly, but nevertheless that was finally worked out—not worked out, they, the park service went to court.

Now, let me very quickly say that I played no role, and I repeat, no role in any discussions between the park service and the college. That was entirely up to the park service and the college how they wanted to make that change.

Let me very quickly move on. The citizens of York County and Adams County, PA and I are proud of the history and the heritage which the Gettysburg National Military Park represents. It is very much a worthwhile and fitting tribute to the intense struggle and defining event in our Nation's history which occurred at Gettysburg.

I would urge the committee to study the particular land exchange in the broader context of the entire GNMP boundary revision and history. The boundary study was completed and recommended the addition of approximately 1,900 acres, which I also got flak for having added to the battlefield by hundreds and hundreds of people in the county. It also proposed the deletion of the 7 acres along Oak Ridge and the exchange between Gettysburg College and the park service.

Throughout the entire boundary study process and House consideration of the bill, no concerns were raised about this land exchange and railroad relocation. The entire process was as open as any could have been; frankly, anyone who did not participate chose not to.

The Gettysburg Battlefield Preservation Association raised concerns after the exchange had been completed and construction had begun. The allegations were looked into by Chairman Vento's National Parks and Public Lands Subcommittee which dismissed the claims of the GBPA.

After suit was filed by the GBPA, the U.S. District Court also dismissed the claim made by GBPA. I believe the basis for the controversy is the same as for others involving the GNMP. There are those who would have Federal Government involved in more land and others involved in less, so those controversies will always arise.

Let me say that when Congressman Kostmayer and I introduced the bill, I expressed my satisfaction that its enactment would secure a final and permanent boundary for the GNMP. This would prevent the haphazard expansion.

At the time, park historian Kathy Harrison expressed qualified support for the legislation. She indicated support for the GNMP expansion, while expressing concerns about the effectiveness of voluntary cooperative agreements to protect other areas. She also expressed concern the legislation did not include certain tracts in the Culp's Hill area and a corridor along Baltimore Pike.

To my knowledge, she did not raise any concerns about the deletion of the 7 acres along Oak Ridge. Likewise, Dr. Walter Powell, Gettysburg borough historic preservation officer, indicated he hoped the legislation would be modified to include the Baltimore Pike corridor.

Again, I do not believe he raised any concerns about the exchange between Gettysburg College and the NPS. Both seemed to support expanding the GNMP even further than its proposed 1,900 acres and would not be truly satisfied until it was larger than the 6,000 acres.

On October 26, 1989, the subcommittee held a hearing on this legislation. I believe all differing views were heard and considered by the subcommittee. The NPS was represented by Ed Bearss, Chief Historian, Jim Coleman, Regional Director and Dan Kuehn, GNMP superintendent. None raised any concerns about the proposed exchange.

A panel of local leaders also testified, including Dr. Walter Powell representing the Gettysburg Battlefield Preservation Association, Dr. Gabor Boritt, a noted historian on the faculty of Gettysburg College who provided a background of the significance of the Gettysburg battlefield, and Mr. Harry Stokes, a member of the Gettysburg Borough Council.

Again, neither Dr. Powell nor others raised any concern about the proposed land exchange either during their testimony or upon questioning by the committee. The fight that I now have, Mr. Chairman, is not with any other committee other than the Appropriations Committee, and I would hope that we could all unite behind them because nothing good is going to happen about the 1,900 acre addition if we can't move something in the appropriations process.

I thank you for the opportunity to testify.

Mr. SYNAR. Thank you, Bill.

[The prepared statement of Mr. Goodling follows:]

U.S. House of Representatives

May 9, 1994

Testimony By
The Honorable Bill GoodlingBefore The
Committee on Government Operations
Subcommittee on Environment, Energy, and Natural Resources

MR. CHAIRMAN, The citizens of Adams County, Pennsylvania and I are proud of the history and heritage which the Gettysburg National Military Park (GNMP) represents. It is very much a worthwhile and fitting tribute to the intense struggle and defining event in our nation's history which occurred around the crossroads town of Gettysburg.

I must say to the Committee that representing my constituents in this area is certainly not always easy. Adams County residents recognize the value of the GNMP to the local economy as well as the battlefield's place in our country's history. However, they also hold strong convictions about individual property rights and frugal government spending. Consequently, we must constantly work to balance the concerns of the preservationist community with those promoting private property rights. The legislation authorizing the land exchange being discussed today is a classic example of the compromise between the protection of the most historically significant areas and the rights of the local community to manage its own affairs.

I would first like to provide the Committee with the background of the legislation which ultimately authorized the land exchange between Gettysburg College and the National Park Service (NPS) and then I will discuss this particular exchange.

I would urge the committee to study this particular land exchange in the broader context of the entire GNMP boundary revision and history. I believe you will find that the boundary law is in the best interest of the future of the GNMP and the Gettysburg community.

BACKGROUND

The difficulty of representing this area and balancing the various concerns is illustrated by the events and actions which resulted in the enactment of the boundary legislation.

On June 16, 1986, the House began consideration of H.R. 4259, which would have authorized the NPS to accept the donation of approximately 31 acres, known as the Taney Farm, for administration as part of the GNMP. The land was to be conveyed to the United States by the Gettysburg Battlefield Preservation Association (GBPA). However, this legislation was defeated for several reasons.

The tract was outside the boundary of the GNMP as defined in a 1974 agreement between Senator Alan Bible and the NPS which limited the GNMP to 3,874 acres. Had this tract been added, it would have set the precedent for a haphazard expansion of the GNMP for which the local community would have had no control.

Opposition to this legislation however was not against actually preserving the area of the Taney Farm; so compromise legislation (H.R. 797) was introduced by Congressman Peter Kostmayer and myself which was enacted in 1987 (PL 100-132) to allow the NPS to accept the donation of the Taney Farm, but also to require the NPS to conduct a study to recommend to the Congress a final and permanent boundary to the GNMP.

The law required the NPS to conduct a boundary study and submit a report to Congress with recommendations for the final development of the GNMP. In conducting the study, the NPS was required to consult with the people of the community and their elected representatives at all levels as well as with other interested individuals and groups.

During House consideration of this legislation, Congressman Vento, Chairman of the Subcommittee on National Parks and Public Lands, stated that, "The study by the National Park Service of the historically important lands associated with the Battle of Gettysburg will help clear up ambiguities relating to the existing administrative boundary and contribute to the proper utilization and management of the historic scene."

This bill passed the House by voice vote on March 10, 1987 with no expressed opposition and was signed into law on October 16, 1987 by President Reagan.

BOUNDARY STUDY

The law required the NPS to conduct a study to recommend a final and permanent boundary for the GNMP. Congress required that this study include extensive public and official input. I am satisfied that the NPS (GNMP, Mid-Atlantic Region, and Washington offices) complied with the letter and spirit of this requirement.

To my knowledge there were four public meetings during the boundary study process. The meetings were well publicized and were held in Gettysburg at very accessible locations. The purpose of these meetings was to update the public on the boundary study process and to consider any concerns raised by the public. To my knowledge, there were no concerns raised at any of these public meetings on the land exchange being discussed today. The NPS also mailed a periodic newletter to over 800 interested individuals.

In addition to the public meetings, NPS personnel individually met with landowners potentially affected by the proposed boundary changes. The NPS also met with local government officials regarding the status of the boundary study and the impacts on local resources.

Concerns were raised about several proposals by local residents and I am pleased the problems were worked out to the satisfaction of both the NPS and the affected parties.

Finally, the release of the draft boundary study provided another opportunity for the public to comment and provide input into the process. The draft boundary study was made available at the GNMP Visitor Center and provided to interested individuals. The NPS provided ample opportunity for anyone with any concerns to participate in the boundary study process.

The boundary study primarily recommended that approximately 1,900 acres be added to the GNMP and approximately 25 acres (8 tracts) be "deleted" from the management of the GNMP. Included in the boundary study was a provision for the re-routing of 3,600 feet of the Gettysburg Railroad from the center of the Gettysburg College campus to the base of Oak Ridge. The proposed land exchange to facilitate the re-routing of the railroad was clearly identified throughout the boundary study process and in the proposed boundary study document.

I would say the boundary study process was as open as any other similar process ever undertaken by our federal government. Every sector of the Gettysburg community was afforded the opportunity to participate in the study. Frankly, if an individual or group did not participate, it was by their choice. The NPS made an extensive effort to reach out to all interested parties in full compliance with the legislative language I drafted requiring extensive consultation throughout the boundary study process.

BOUNDARY LEGISLATION

Implementation of the boundary study recommendations required an act of Congress. Former Congressman Peter Kostmayer and I introduced legislation (H.R. 3248) to revise the boundaries of the GNMP consistent with the recommendations of the NPS boundary study.

When Congressman Kostmayer and I introduced this bill, I expressed my satisfaction that its enactment would secure a final and permanent boundary for the GNMP. This would prevent haphazard expansion of the GNMP and would provide local planners a clear understanding of the jurisdiction of the federal government. I also expressed my satisfaction that the NPS met its responsibility to provide the local community every opportunity to participate in the boundary study process.

At that time, Park Historian Kathy Harrison expressed qualified support for the legislation. She indicated support for the GNMP expansion while expressing concerns about the effectiveness of voluntary cooperative agreements to protect other areas. She also expressed concern the legislation did not include certain tracts in the Culp's Hill area and a corridor along Baltimore Pike. To my knowledge, she did not raise any concerns about the deletion of the seven acres along Oak Ridge. Likewise, Dr. Walter Powell, Gettysburg Borough Historic Preservation Officer, indicated that he hoped the legislation would be modified to include the Baltimore Pike corridor. Again, I do not believe he raised any concerns about the exchange between Gettysburg College and the NPS. Both seemed to support expanding the GNMP even further than the proposed 1,900 acres and would not be truly satisfied until the GNMP was much greater than the almost 6,000 acres.

The GNMP boundary legislation received appropriate and extensive consideration by the House Committee on Interior and Insular Affairs Subcommittee on National Parks and Public Lands.

On October 26, 1989, the Subcommittee held a hearing on this legislation. I believe all the differing views were heard and considered by the Subcommittee. The NPS was represented by Ed Bearss, Chief Historian; Jim Coleman, Regional Director; and Dan Kuehn, GNMP Superintendent. None raised any concerns about the proposed exchange.

A panel of local leaders also testified including Dr. Walter Powell, representing the Gettysburg Battlefield Preservation Association (GBPA); Dr. Gabor Boritt, noted historian on the faculty of Gettysburg College who provided a background of the significance of the Gettysburg Battlefield; and Mr. Harry Stokes, member of the Gettysburg Borough Council. Again, neither Dr. Powell nor others raised any concerns about the proposed land exchange either during their testimony or upon questioning by the Subcommittee.

The Subcommittee continued its consideration of this legislation with a site visit and tour of the GNMP on November 18, 1989. The tour included myself, Congressman Bruce Vento, NPS Regional Director Jim Coleman, Acting GNMP Superintendent Frank Verdick, Assistant Superintendent Bob Davidson, Regional Planner Jonathan Doherty, Interior Committee Staff Heather Huyck, John O'Donnell, Jim Bradley, and Curt Christiansen, and Jay Eagen of my staff. Others were also invited to participate. The tour included stops at several areas which were not included in the proposed boundary but were recommended for inclusion by the GBPA or others. The tour also included visits to areas recommended for deletion by the boundary study.

The tour included a stop at Oak Ridge to view the proposed land exchange between Gettysburg College and the NPS. At this point, the group was joined by representatives from the College to explain the proposed exchange and relocation of the railroad from the center of the Gettysburg College campus to the base of Oak Ridge. William P. Van Arsdale described the relocation of the railroad and I understood that excavation would be required along the ridge to meet engineering requirements. After a fairly lengthy discussion, the tour continued to Herr's Ridge.

Subcommittee mark-up was held on March 13, 1990 at which point the bill was amended to include some of the tracts not originally recommended by the boundary study but recommended in comments or in testimony provided to the Subcommittee. The bill was approved by the subcommittee and later by the full committee on March 28, 1990.

On May 1, 1990, the House considered and passed this legislation to enact a final and permanent boundary for the GNMP and also to promote and encourage conservation of historic resources within the historic district. In his remarks before the House, Congressman Vento stated that, "I endorse this legislation because I believe that it will help protect the historic resources of the Gettysburg National Military Park and the Gettysburg Battlefield Historic District for us and for future generations." He also expressed his thanks to Congressman Kostmayer and myself for our "good efforts to find an appropriate and balanced approach to the protection of these resources." Congressman Lagomarsino, Ranking Member of the Subcommittee on National Parks and Public Lands, added that "The NPS Boundary Study was not only professionally done, but contained a thorough analysis of the interests which are needed in order to protect the resources of this park." Likewise, Congressman Peter Kostmayer, cosponsor of the legislation and member of the Subcommittee, stated, "this is a good law." (Congressional Record, May 1, 1990)

The bill passed the Senate on August 4, 1990 after appropriate consideration by the Senate Committee on Energy and Natural Resources. This legislation was considered by both House and Senate authorizing committees and passed by both houses. President Bush signed this bill into law (PL 101-377) on August 17, 1990.

During the legislative process, as in the boundary study itself, there was significant opportunity for public comment and input. The process conducted by the Subcommittee on National Parks and Public Lands was as open as any legislative action I have seen. I firmly believe that every comment and concern presented to the Subcommittee was given full and fair consideration. I am sure that had any concerns been raised about the exchange between Gettysburg College and the NPS and the relocation of the railroad, the Subcommittee would have carefully considered those concerns prior to taking any action on the legislation.

When this legislation was signed into law, I expressed my satisfaction stating that the, "Gettysburg National Military Park is one of this nation's most important historical sights. It is also an integral part of the our community. By creating a final boundary, the new law will ensure the historical setting of the Park is preserved and protected for posterity."

GETTYSBURG COLLEGE - NPS LAND EXCHANGE

Public law 101-377 primarily implemented the NPS boundary study with some modifications. The legislation deleted 8 tracts as recommended in the boundary study. One of those tracts to be deleted was a 7 acre tract along Oak Ridge and the Gettysburg College Campus.

In September of 1990, the agreement was signed by the National Park Service and Gettysburg College to provide the NPS with a protective scenic easement on 46 acres of historically significant land which the college owned in exchange for the 7 acre tract along Oak Ridge. Gettysburg College had been negotiating with the NPS for several years to acquire land along the base of Oak Ridge to relocate a railroad which bisected the campus making approximately one-third of it unusable for future development. In addition to restricting college development, the presence of the railroad posed a safety risk to students. By acquiring the 7 acre tract, the college could avoid development of a historically significant 46 acre tract and improve safety and development prospects for the college.

It is my understanding Gettysburg College complied with every requirement and request of the NPS in negotiating the exchange and planning the project. The College secured a NPS recommended archeologist and the NPS supervised the work. In addition, the project had to be approved by the Park Historian, who I understand raised no concerns about proposed activity at the southern end of the 7 acre tract.

The railroad relocation project required the approval of several federal and state agencies and departments, including the NPS and the Pennsylvania Historical and Museum Commission, plus Congress and the White House. The project received all required approvals.

The GBPA contacted the House Interior and Insular Affairs Committee regarding alleged mishandling of the land exchange by the NPA and Gettysburg College. I understand Chairman Vento and the Subcommittee on National Parks and Public Lands looked into the allegations and determined that all appropriate regulations and procedures were followed and no further action was necessary or warranted.

As you are aware, the GBPA then filed suit against the NPS and Gettysburg College to restore the ridge to its condition before the railroad was relocated. The U.S. District Court for the Middle District of Pennsylvania dismissed all claims made by the GBPA. This decision was upheld by an appellate court.

I firmly believe both Gettysburg College and the NPS made a conscientious effort to comply with all laws and regulations regarding the transfer of property and historical and environmental protection. Federal and state agencies as well as the federal courts scrutinized the project and approved the actions taken. I am convinced that both the College and the NPS are still fully confident they acted in the best interests of both the local community and the country.

I know there are those who believe there is a grand conspiracy between Gettysburg College, the NPS and Members of Congress. I can assure the Members of the Subcommittee there was no conspiracy. In fact, the legislative language was drafted in a manner to assure the process was open to everyone. The involvement of Congress is how I have described it. I am sure Congressman Vento and former Congressman Kostmayer can corroborate those statements. There were no backroom deals or cover-up and no system was shut down.

CONCLUSION

Again, I would reiterate that the Subcommittee must look at the boundary revision in its totality. It was a compromise in the classic sense. I believe you will find that the final and permanent boundary for the GNMP is in the best interest of the local community and the country.

I believe the basis for the controversy in the case of the land exchange between Gettysburg College and the NPS is the same as for all other controversies involving the GNMP. There are those who would have the federal government control every inch where a Rebel or Yankee stepped during that three-day battle. There are those who believe the federal government has no right to control local property. The boundary legislation attempted to reconcile that difference of opinion through compromise. Even though the new boundary added approximately 2,000 additional acres to the GNMP and it now encompasses the most historically significant areas of the battlefield, to some that still is not enough. Conversely, while the boundary is now final and permanent, there are those in the local community who still believe regulations of the historic district and use of federal lands are too restrictive.

I can say with complete confidence that every effort was made to include all interested parties in the boundary study process and consideration of the boundary legislation. If any individual or group did not participate in the process, it was by their own choice. I am sure that had any concern been raised about the deletion of the 7 acres along Oak Ridge either during the boundary study process or during consideration by the House Interior and Insular Affairs Committee, the issue would have been given appropriate consideration by the House.

The bottom line is that a final and permanent boundary for the GNMP was implemented which protects the most historically significant areas of the Gettysburg battlefield. It also provides the local community with defined boundaries for administration and provides assistance for local communities to plan development consistent with the mission of the GNMP. The agreement between Gettysburg College and the NPS exchanged 7 acres of uninterpretable land for permanent protection of 46 acres of historically significant land.

The intent of all those involved in establishing the new and permanent boundary for the GNMP was to ensure the protection and preservation of the most historically significant areas of the Gettysburg battlefield. Further, I believe we must look at the boundary in its totality and when we do I believe we will find that it was an appropriate compromise in the best interest of the country.

Mr. SYNAR. Joining us now is our former colleague and now Regional Administrator of EPA, dear friend and just a darn good person, Peter Kostmayer.

STATEMENT OF HON. PETER KOSTMAYER, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. KOSTMAYER. Thank you very much, Mr. Chairman. Back in 1987, as Congressman Goodling said, I introduced some legislation to add a relatively modest amount of acreage to the Taney tract, 31 acres which was passed and signed by the President.

Then we began to look at this whole issue, and Congressman Goodling and I got together. As we indicated, we came up with legislation expanding very substantially the acreage at Gettysburg Park, a very, very substantial addition to the park which I am very, very proud of.

Involved in this expansion were also some trades. This was one of those trades. I went up to look at this piece of land before the work and after the work as well. When I went up to look at it before the work was done, I asked two questions specifically. I said is this territory of historical significance. I was told by the park service not especially.

I asked will the work which is going to be done here mar or destroy the land? They said no, it won't, you won't be able to really tell the difference. If that had been kept to, we wouldn't be here today. That really is where the problem occurred.

Now, I don't know when this happened, but the agreement which we worked out with the college and the park service and Congressman Goodling was in fact not involved in the details of this particular exchange, as he has indicated. If that had been kept to, if the maps had been adhered to which we saw, if the tracks had gone where they were supposed to, then there wouldn't have been any problem, but all kinds of work was done which was never envisioned and which we were never told about.

The tracks were not put where they were supposed to be put, a building is I think going to be erected, if it hasn't already been, we were never told about. I asked specifically, Mr. Chairman, about trees. I was told the trees would not be torn down. They were. What happened, I don't know.

Perhaps we should have gone up there every day and checked to see that the park service and the railroad and the college were doing what everybody told us that they would do. They didn't. Somewhere we got lost. Now, I think the only thing that needs to be done to right this wrong is to restore the land fully and completely and to reverse this mistake or else to have it done properly.

The only other thing I would say is that one of the issues we were working on at the time was a proposal for something called, I think, the Gettysburg Commons which is a major shopping mall at the other end of the battlefield—terrible idea.

I hope, Mr. Chairman, you use all your influence to see that there are no more shopping malls constructed in or near Gettysburg. It is the last thing Gettysburg needs.

Mr. SYNAR. Thank you very much, Peter.

Mr. SYNAR. Finally, we have probably one of the two or three best Civil War buffs and historians in the House, Mr. Andrews.

Mike, welcome.

STATEMENT OF HON. MIKE ANDREWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ANDREWS. Thank you. Thank you very much, Mr. Chairman. I appreciate very much the opportunity to testify today on this very important issue.

As you know, with your help back in 1988, a group of us led the fight to stop a shopping mall development that was to be located near Manassas National Battlefield Park which would have been located on the battlefield and adjacent to the park itself, and would have literally destroyed not only a significant part of the field, but would have impacted the national park for generations.

I have also worked hard to help pass legislation that created the Civil War Sites Advisory Commission, a group whose recommendations I know the Congress and this subcommittee will look hard at as we try to view parks across this country and see how we can protect them.

The Civil War is the single most important event in our Nation's history. America's social and economic foundations before the war were forever changed by the war, and its impact continues to affect our national debate.

The Nation was infused, as Abraham Lincoln said, with a "new birth of freedom," and it is not by coincidence that students in this country divide their study of American history by the Civil War. Civil rights, women's rights, economic and trade policy were issues literally driven into the 20th century by the War between the States.

America was a different country before the war, and it was a different Nation after the war. So understanding the Civil War—its reasons, its battles, its politics, its costs, its significance—is important in understanding who we are as a Nation and where we are going.

It is almost incomprehensible to imagine young boys and men from States like New York and Pennsylvania waging a war against young men from Virginia and North Carolina and Alabama, and yet on the first day of July 1863, that is what happened across the fields west of Gettysburg.

The railroad cut that is the subject of this hearing was a central part of that first day's fighting. In fact, some of the most desperate fighting of the war took place there. There is really no more historic part of the Battle of Gettysburg. And now it has been destroyed.

Often grasping the significance of events more than 125 years ago is difficult at best. It is hard to imagine a person like Bill Goodling leading the Pennsylvania Bucktails into that cut to attack young soldiers from North Carolina and Mississippi, but those kinds of things happened. And the battlefields of the war, the tangible legacies of the war, places like Antietam and Chancellorsville and the Wilderness and Glorietta Pass and of course, as you said, Mr. Chairman, the crown jewel, Gettysburg, it is important that we protect them.

Our generation's obligation to our own history is to make sure that this kind of historic vandalism never happens again. The Battle of Gettysburg was the greatest battle of the war, it was the turning point of the war, 150,000 troops converged on that hamlet, 50,000 young men were wounded or killed in 3 days of bloody fighting.

In that little cut that was destroyed, one of the most dramatic moments of the battle occurred. A group of soldiers from the 16th regiment from Maine, found themselves surrounded by North Carolina troops up on top of the embankment—which has been totally eliminated and eviscerated by bulldozers—and as the young men from Maine realized they were hopelessly outnumbered they decided to surrender. Rather than to turn over their banners to the Confederate troops, they tore them up into little pieces as fast as they could and stuffed them in their clothing. Many of them carried those pieces of flags through Confederate prisons and then back to Maine after the war.

It was one of the most dramatic moments, not just of the Battle of Gettysburg, but of the war itself. Those kinds of things are important, and the destruction of a landmark that played such an important part of such an important battle is tragic.

The excavation of Oak Ridge near Gettysburg is not to be taken lightly. It should not be easy to destroy part of the Battle of Gettysburg, and we should not tolerate the destruction of our history, whether it was willful or negligent or a case where someone simply looked the other way. It is right that Congress examine this issue and try to set up some parameters where this cannot happen again in the future.

Should the Interior Department have been more vigilant in monitoring the upkeep of such an important area? Of course, I think so. Would the public at large have agreed to this exchange had they known what was going to happen? I doubt it very seriously. But these are questions that are probably better answered by the people that were involved there.

In general, what happens, what happened at Manassas, what happens at places like Brandy Station today, is that local leaders intent on economic growth, developers and property owners anxious to realize their own goals, and local citizens many times not really aware of what political decisions are being made or what the significance historically is to what is happening, just don't respond and don't act. Clearly local leaders in this case in particular, especially those from an important college like Gettysburg College, have an important responsibility to recognize that their decisions will have an enormous impact on one of our greatest national treasures.

Historic preservation at a place like Gettysburg is not just for historians. Actually Gettysburg itself, as both my colleagues here would attest, represents the best and the worst of battlefield preservation. It is a massive park in its scope and history, and much of it has been proudly preserved. Students of history, tourists, people from around the world travel there, just like Robert E. Lee, to learn about Culp's Hill and Little Round Top and Seminary Ridge, and yet despite the park's many successes, a grotesque observation

tower blights the landscape, and fast food restaurants border the ground of Pickett's Charge.

The Federal Government cannot, as it did at Manassas, afford to buy off every greedy developer; nor, however in this instance, can it stand back and rely solely on the judgment of community leaders, and in this case maybe local park officials. Too often their local goals and ambitions don't coincide with the larger national purpose of preserving our past.

Mr. Chairman, thank you very much for allowing me to testify. This is an important hearing and I look forward to the results.

Mr. SYNAR. Thank you, Mike, Bill, and Peter, all three.

Just a couple of observations. First of all, I would be remiss if I didn't thank Bill Goodling and his staff and office for the excellent support we have had throughout the preparation of this hearing; and second, I think that the testimony of you three really makes the point that we are going to continue to make over and over today, which is that this particular agreement and the way it was carried out didn't necessarily have, "the congressional approval and review" as Peter pointed out that people have hung their hat on.

That is important as we set the stage here on not only this exchange, but future exchanges on what Congress' role is and everybody else's role, so I thank all three of you for being here today.

Before I begin, I want to make some comments on the procedure for today's distribution of exhibits. Typically we put out 50 or more copies of exhibits on the tables to pick up as we introduce them into the record. Today, however, we have an unusually large number of exhibits that would make this problematic for two reasons. We simply don't have the staff and resources to make 50 to 100 copies available. More importantly, the prospect of constant and continual disruption through the hearing forces us to make changes in the normal procedure, so here is how we are going to do it: There are three notebooks, the ones in front of you on the witness table. Each contains a full set of exhibits that we will be introducing and referring to throughout the hearing.

Those are for the witnesses' use during the testimony. We have also prepared a limited number of full sets for distribution to the press.

Now, with regard to everybody else who may want copies of some or all of the exhibits, and I want to emphasize that anybody can have copies, we have put a sign up sheet at the press table. If you will leave your name, your address, your phone number, and identification of exhibits you need, or contact us by phone, we will get you those as soon as we can.

Finally, I would just ask one thing that the minority counsel already has the exhibits and, of course, the copies will be made available to all members. One other thing before we begin. As you know, late last week the leadership of the House once again changed the schedule for us, and as a result, there are no votes today or tomorrow.

Given the opportunity to be back in the districts, understandably most Members have returned home. Consequently, I may be the only Member here today and despite our best efforts to find an-

other member of the committee, we have not been able to do so at this time.

Now, having already postponed this hearing once, and given that virtually all the witnesses had to change their own schedules and make travel plans to be here today, I did not believe that it was fair to all of them to cancel at the last minute. So with the concurrence of the minority, we are going to go ahead, with my sincerest apologies to everyone.

However, I want to make sure that all the witnesses realize that they have the right to decline to testify in the absence of a second member. Obviously, I hope that our witnesses will understand this last minute change in circumstances and proceed as planned with their testimony.

The subcommittee and most of the witnesses have already spent a long time preparing for this, and it is time to get on with it and bring it to closure, so I urge all my witnesses to proceed as planned, but the Chair is obligated to advise you that you have the right to decline to testify in the absence of a second member.

With that said, let's call on our first panel this morning. I want to just announce right up front, this hearing is not going to be as long as the battle—but it is going to be longer than the movie with the intermission. So everybody just get psyched, we are going to be here a little while today.

Our first panel is Mr. Kent Masterson Brown, historian, chairman, Advisory Commission, Gettysburg National Military Park; Dr. Richard Sayers, historian and author, and Mr. William Frassanito, board member and treasurer of the Gettysburg Battlefield Preservation Association. These three gentlemen please come forward.

Gentlemen, it is the policy of this subcommittee in order not to prejudice past or future witnesses that we swear in all witnesses. Do any of the three of you have any objection to being sworn? If not, please stand and raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Welcome, gentlemen. As you heard from the first panel, your entire testimony will be made a part of the record. At this time, we would ask you to summarize your remarks in about 5 minutes.

Why don't we start with Mr. Frassanito who is going to present a little bit of a slide show to kind of give us an overview of where we are going?

STATEMENT OF WILLIAM FRASSANITO, BOARD MEMBER AND TREASURER, GETTYSBURG BATTLEFIELD PRESERVATION ASSOCIATION

Mr. FRASSANITO. OK, I have a statement that should be exactly 5 minutes, and I was asked to give a little bit of my background, my credentials, and an overview on the history of the site.

I am a professional photographic historian and have been studying the Battle of Gettysburg for the past 40 years. I received my BA in American history from Gettysburg College in 1968 and my MA in American cultural history from the State University of New York at Oneonta in 1969.

I worked as a licensed battlefield guide at Gettysburg from 1966 to 1968, and as a lieutenant in the U.S. Army, I served as an intel-

ligence analyst with J2, MACV Headquarters, Vietnam from 1970 to 1971.

I have thus far written four books dealing with Civil War photography, including "Gettysburg: A Journey in Time," which was published by Charles Scribner's Sons in 1975. "A Journey in Time," the only scholarly study ever written on the early photographic coverage of the Gettysburg battlefield, is still in print 19 years later and has sold approximately 100,000 copies. It was a selection in the Book of the Month Club, was chosen by the American Library Association as one of the best 50 nonfiction books published in the United States in 1975, and, in 1981, it was selected by a panel of more than 30 Civil War scholars as being one of the best 100 books ever written on the Civil War.

In recognition of my research in the field of Civil War studies, my alma mater, Gettysburg College, presented me with their distinguished alumni award in 1984.

My interest in the Seminary Ridge or Oak Ridge Railroad Cut evolved over the years as I began to realize that this was the only one of the two major railroad cuts on the Gettysburg battlefield which attracted the attention of photographers during the first two decades after the battle. Not until the mid-1880's, when Union veterans constructed their battlefield avenue over the nearby cut at McPherson's Ridge, the site of a Union victory on July 1, 1863, did attention begin to shift away from the cut at Seminary Ridge.

The Seminary Ridge Railroad Cut was excavated in, or by 1838, as part of a railroad line promoted by a local Gettysburg politician, Thaddeus Stevens, who later achieved national prominence during the Civil War and reconstruction. The initial project failed, and between 1839 and 1885 the unfinished railroad bed extending many miles west of Gettysburg lay abandoned and was used by the local populace as a wagon road.

Because the cut at Seminary Ridge, better than any other in Adams County, exposed an excellent cross section of Triassic-Age rock formations, the Seminary Ridge Railroad Cut was used as an educational tool by successive natural science professors at Pennsylvania College, later known as Gettysburg College. The feature's geologic significance was highlighted as recently as August 1990 in an article which appeared in Public TV's *Apprise* magazine.

During the first day's fighting at Gettysburg, Seminary Ridge served as the final defensive line for the Union First Corps. The Seminary Ridge Cut, forming a gaping hole in the middle of this line, assumed great tactical significance because its capture by Confederate forces would have afforded the Southerners with covered access to the rear of the First Corps line. Consequently at midday on July 1, 1863, Stewart's Battery B, 4th U.S. Artillery, supported by infantry, was positioned at the Seminary Ridge Railroad Cut, straddling the distinctive feature on both of its sides.

By 4 on the afternoon of July 1, the Union First Corps lines west of Seminary Ridge had collapsed and their lines south and north of the Seminary Ridge Railroad Cut were imploding, the final escape route being the unfinished railroad bed leading eastward from the cut itself. The fighting in this area reached a climax by about 4:30 p.m. when Confederate infantry converged on the cut, capturing several hundred northern infantrymen in what was probably

the largest mass capture of Union soldiers during the 3 days fighting at Gettysburg. Although Stewart was able to extricate his battery from this desperate situation, his command in defense of the cut suffered the second highest casualties of all the 68 Union batteries that served at Gettysburg.

Because of its unique configuration and placement, the Seminary Ridge Railroad Cut was first defended by Union artillery and infantry, the position was contested, it was overrun, and it was subsequently occupied by Confederate artillery and infantry. Only one or two other terrain features on the entire Gettysburg battlefield can meet all of these requirements for significance.

The documentation necessary to establish the historical sensitivity of the Seminary Ridge Railroad Cut as well as the adjoining 7.5 acres was readily available at the libraries of both the Gettysburg National Military Park and Gettysburg College. If either of these institutions needed guidance in how to use their own resources, help was always but a phone call away.

Thank you.

[The prepared statement of Mr. Frassanito follows:]

Statement of William A. Frassanito
May 9, 1994

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The documentation necessary to establish the historical sensitivity of the Seminary Ridge Railroad Cut, as well as the adjoining 7.5 acres, was readily available at the libraries of both the Gettysburg National Military Park and Gettysburg College. If either of these institutions needed guidance in how to use their own resources, help was always but a phone call away.

During the three-month period from January through April 1991, the public was forced to watch - relentlessly, day after day, week after week, month after month -- the most massive destruction of fully protected historic terrain in the 78-year history of the National Park Service (NPS). Nothing like this had ever happened before.

The disaster at Seminary Ridge did not have to occur. While the NPS and Gettysburg College were able to hide from the public (together with all knowledgeable historians of the battle and the government of the Borough of Gettysburg) all of their secret negotiations between 1987-90, neither the NPS nor the College could ultimately hide the bulldozers.

The public alarms began sounding locally on January 10, 1991, when neighbors of the site (including the chairman of the Gettysburg Borough Planning Commission), observing the bulldozers in action, instantly recognized that something terribly wrong was happening at Seminary Ridge. Within a week's time, local historians, intimately familiar with the battle, the battlefield, and the Boundary Study, were desperately trying to find out from the local NPS staff what in the world was going on. The Park's senior historian, once alerted, was equally distraught over the unfolding disaster.

Unfortunately, the NPS administrators at both the local and regional level responded to the increasing crescendo of alarms by switching promptly into their coverup mode. Denials, lies, refusals to release information, and gag orders were quickly implemented.

By January 23, 1991, both the Gettysburg Borough Planning Commission (of which I was then a member) and the borough's Historical Architectural Review Board had passed unanimous resolutions calling upon the borough council to seek an immediate halt to all excavation activities, as well as an immediate and full investigation into the background of the obviously secret dealings which had transpired between the NPS and Gettysburg College.

Because of the College's early and blatant violation of the third of only three deed restrictions, requiring that they "shall not remove the existing screen of trees and other vegetation located between the site of the planned railroad facilities and the college facilities proper," a court injunction could readily have been secured by either the NPS or the borough government. To this day, the NPS has never commented upon, nor even acknowledged the violation of this crucial deed restriction.

On January 25, 1991, a local newspaper reported that the Pennsylvania Historical and Museum Commission had "contacted the park service to get them to investigate this issue," adding that "we are very upset by the damage done to the battleground features."

At the request of Dr. Boritt of Gettysburg College, a meeting between local historians and three high-level representatives of the College was held on campus to "straighten this thing out." At this meeting, the college representatives, none of whom had any firsthand knowledge of the Park/College negotiations, were briefed by me on the rich history of the site they were at that very moment destroying. This briefing made no apparent impact on the college representatives, who simply insisted that the College had done everything "properly," and that if we had any problems with the results, the NPS must have been at fault. Essentially they claimed that it was not Gettysburg College's responsibility to know about the history of their own campus.

Needless to say, there was never any investigation, no halt to excavation activities, nor even a hint of curiosity on the part of senior College or NPS administrators about what was happening at Seminary Ridge. The coverup story aggressively promulgated by the NPS was suspiciously similar to the story then being promoted by the public relations office of Gettysburg College. It is a fictitious story, and both entities have tenaciously, and very successfully (until now), adhered to it for the past three years, all the time hiding behind the umbrella of protection afforded the NPS by the full weight of the Federal Government.

In short, the NPS and Gettysburg College fiddled while the battlefield burned. And during those three months, with the public alarms sounding all the time, the American people lost one of the key terrain features on one of the world's most significant battlefields.

The basic lies promoted by both the NPS and the College -- stated over and over again, ad nauseam -- can be summarized by the following quotations, all dating from the period of the excavation. 1) "That property was on the fringe. This particular sliver was not the scene of any important fighting or significant resources." -- Bob Davidson, Assistant Superintendent of the Gettysburg National Military Park (GNMP). 2) "There is no record of fighting on the portion of Oak Ridge in question"; and, "Opportunities for public review and comment were provided by five public hearings held in Gettysburg on the Boundary Bill." -- William Walker, Director of Public Relations, Gettysburg College. 3) "All requirements of Section 106 of the National Historic Preservation Act were carefully followed during the decision-making process." -- James W. Coleman, Jr., Mid-Atlantic Regional Director, NPS (and incidentally, the man who signed the deed transferring the historic acreage to Gettysburg College).

Had Mr. Coleman made a simple phone call to the historian's office at the GNMP, he would have quickly learned what the Gettysburg Battlefield Preservation Association (GBPA) had already learned from the same office in January 1991: that no Section 106 historical study and impact assessment, nor

anything even approaching a Section 106 study, was ever conducted on the land Mr. Coleman had personally transferred to Gettysburg College.

Had Mr. Davidson, whose knowledge of the battle one could probably fit on the head of a pin, taken the trouble to contact his own historians, he would have quickly discovered that his statement was totally false.

Mr. Walker's statement concerning the public hearings is equally bizarre. It is our understanding that Mr. Walker was not even employed by Gettysburg College until the year following the last public hearing, and we would love to know the source of his statement, first concocted in January 1991.

Since that January, both the NPS and Gettysburg College have done everything in their considerable power to make sure that there would never be any investigation or hearings into the details of their land trade. Their success until now has rested entirely on the fact that their opposition was but a handful of ordinary citizens who had absolutely no influence with the Federal Government.

Beginning in June 1991, the GBPA sent 218 Congressmen a 16-page, photo-illustrated booklet outlining the nature of the disaster and calling for an investigation. An additional 1,000 booklets were sent to Civil War organizations; Civil War journals; the Justice Department; the Office of Inspector General of the Department of the Interior; and to private citizens, urging the latter to contact their local Congressmen.

Sadly, most Congressmen completely ignored the issue. And of those few who did look into the matter, not one ever did anything more than contact either the NPS or the Representative of Pa.'s 19th District to ask if everything had been done properly and openly in the Park/College land transfer. Needless to say, the foxes assured these Congressmen that everything was OK at the chicken coop. End of "investigation."

Failing to elicit any curiosity from the Federal Government, and encountering nothing but impotence at the state and municipal level, the GBPA found itself shouldering the awesome burden of overseeing the enforcement of all applicable Federal, state, and local historic-preservation and environmental-protection statutes (on our own time and at our own expense). But even our attempt to engage the courts ended in a dismal failure — the Federal judges, without hearing any testimony or eliciting any evidence, arbitrarily buying the Park/College lies and summarily dismissing our complaint.

What happened at Seminary Ridge was not an accident. It was not an "honest mistake," nor simply the result of bad communications. Had this been the case, there would have been no need for the ensuing coverup, the ensuing lies, and the concerted effort to avoid any investigation or formal hearings into the land transaction. Because of the safety net provided by the public alarms, any "honest mistake" could have been rectified in time to save the entire site.

Instead, we believe that what happened at Seminary Ridge was the result of a calculated scheme masterminded by the business manager of Gettysburg College, with the obvious intent of making the implementation of this scheme a "done deal" as quickly as possible. It was a very effective modus operandi, and it should be noted that this individual has a history of using it before. Despite all of the alarms, Gettysburg College, which ironically attempts to market itself as some kind of a national center for Civil War studies, chose to batten down the hatches and destroy the site anyway.

The NPS's motive for engaging in the coverup is readily explained by the simple fact they were made fools of, and were perfectly willing to sacrifice one of the key terrain features on the Gettysburg battlefield to avoid the embarrassment of the truth.

To those who claim that because the site has already been destroyed, the whole matter should therefore be forgotten, we would respond by pointing out that your reaction is exactly what was anticipated.

This site CAN be restored. Certainly it will cost Gettysburg College millions. But we cannot think of a more appropriate punishment for those who arrogantly spent millions to make this a "done deal" as quickly as possible. And while the Railroad Cut, in particular, can never be returned precisely to its original state, whatever is done to restore the Cut will be infinitely better than the travesty which exists there today. (An arm, severed by a shark, can never be restored; but artificial replacements are readily available, and are obviously preferable to a useless stump.)

One final note. There is absolutely nothing wrong with the Federal, state, and municipal historic-preservation statutes as they currently stand. The problem was never with the laws themselves. The disaster at Seminary Ridge resulted directly from a combination of mindboggling incompetence, deceit, and the fact that these statutes, for whatever reason, were completely ignored by those charged with their enforcement. The public caught this disaster in sufficient time to save the historic terrain. While incompetence may, perhaps, be excused in hindsight — the deliberate, cynical, and arrogant responses of both the NPS and Gettysburg College to the desperate pleas of the public and professional historians can never be condoned, forgiven, or forgotten.

William A. Fessenden

Mr. SYNAR. Why don't you go through your slides right now, show us what you have?

Mr. FRASSANITO. Do you have a speaker? Do you want me to—

Mr. SYNAR. Just do it from right there.

Mr. FRASSANITO. I should add that I had submitted these slides a while ago, and I don't have really a good idea what order they are in.

I hear there are some slides here that I have not seen before, so bear with me. Really, usually when I give a slide show, I am up at the screen. You don't have a pointer, do you? OK, I will just have to do this from the seat. As I mentioned in my opening remarks, I discovered in my research that for the first 20 years after the battle, the only one of the railroad cuts that attracted the attention of photographers was the cut at Seminary Ridge.

This is the earliest photograph to show the cut. It was taken by a Philadelphia photographer named Frederick Gutekunst in July 1863. Gutekunst took two variants of this same view. This photograph is one of the best to show the cut, and what is most dramatic, and you have to understand, is that the railroad cut was smack in the middle of the final defensive line of the Union First Corps.

It should be very obvious to anyone, whether you have served in the military or not, the threat that that gaping hole posed in that ridge. Had the Confederates been able to capture that position and pour through it, they would have had access to both the left or the right of the Union lines, so that cut was of critical importance. The fighting began west of there during the morning, through the afternoon, but again by 4, 4:30, everything was focusing on this area and that cut.

Not only were photographers attracted to that cut, but in about 1870 an artist named James Walker did this painting of the final Confederate attack against the Union lines which had fallen back to Seminary Ridge. You see the cut off on the left there, and I really don't know what I have next.

Let me just mention this, this rendition of the painting is not the original. This is from the American Heritage Picture History of the Civil War which came out in 1960. There are two versions of the painting. This is a copy. The original version is owned by a member of the Gettysburg Battlefield Preservation Association, Craig Caba, and he has let us use the rendition.

You see the Oak Ridge Railroad cutoff on the left. Stewart's battery is there, you see the Union infantry in support both to the left and right of the cut. One of the most interesting things about the original painting is that if you look through the cut, and you cannot see it on this version, and let me see if you can see it here.

You can barely see it here, but if you look through the cut—let me see what the next slide is going to be. OK, we will have to work with this. Based on the research of the late Robert Hoffsommer, he found out, he discovered that this painting was done from the perspective of Confederate Gen. A.P. Hill, and the original version, and you really can't see it very clearly, way back in the distance through the cut there are Union troops retreating from left to right toward the town.

These are elements of the Union 11th Corps, their position was on the Union right flank. According to Robert Hoffsommer's research, A.P. Hill, because he could see through the cut, received his first indication that the Union right flank had broken because he could see those Union troops retreating along the rear of the Union First Corps, and it was this discovery that gave him the assurance that if he pressed his attack, the Union line was about to crumble from right to left, and had he not had that vision, that view through the cut, there is no way he would ever have been able to see from this perspective what was happening to the Union 11th Corps.

The perspective of this painting, and again I won't go into great detail, but the Confederate troops attacking this position found themselves involved in a bloodbath. In fact, a Confederate, General Scales, whose troops would be in the right foreground as they approached the cut, General Scales in 1882 mentioned to Col. Rufus Dawes, a Union colonel of the 6th Wisconsin that the fire the Confederates received from battery B at the cut was the most destructive fire he had ever witnessed during the entire war.

I will skip over that slide and get into the Bachelder maps, and again just let me walk up here, and I will point out the area that I am going to be talking about. Can you all hear me very clearly? OK. Well, we will forget about that.

The Bachelder maps were done by Col. John B. Bacheider, who is the first great historian of the Battle of Gettysburg. He arrived on the field shortly after the battle and he studied it right until the time of his death in 1894. The area of the railroad cut is here. This is the Chambersburg Pike leading westward and the adjacent unfinished railroad bed. The railroad cut in question is right here.

On this map you see Stewart's Battery, in half battery, both sides of the cut, three guns on the right, three guns on the left supported by the 6th Wisconsin. This map needs some explanation because this is part of a series of three maps that he was commissioned to do in 1876. At that time, he only had one map for each day, so this is a consolidated overview that he did of the first day's fighting, and this of course is not the complete map.

I point this out because he depicts the action here a little earlier in the day before the fighting actually climaxed at the cut. If anybody had any questions, whether it is a junior high school student or a superintendent of a park about how you research an action here, what you do is you don't go to this Bachelder map, you go to the manuscript Bachelder maps at the Gettysburg National Military Park.

In the mid-1880's Bachelder was commissioned to do an entirely new series. These are sometimes hour by hour, 2 hour intervals, and each day has its own volume, you open them up, they are massive and on every map he showed where each unit was at that particular time.

Mr. SYNAR. Mr. Frassanito, why don't you get us through all the slides quickly?

Mr. FRASSANITO. OK, I am going into too much detail. Anyway, if you go to the 4 p.m. situation map, you will see very clearly troops converging at that cut at the climactic confrontation. If you want to research it, you find out what units are on the map, and

you go get the official records, the official reports, et cetera, and you will quickly find out what those troops were doing at that point.

OK, there have been a lot of questions about the fact that this is the only monument in that area. That is completely irrelevant. The monument craze took place during the 1880's. This area is a backwater area. You had the road constructed in 1886 in this area, the road was constructed by Union veterans who focused on the cut west of here and they ignored this cut.

Shortly after the road went up, you had the monuments going up, and from that time the focus shifted to where the monuments are. Many units had many options as to where to put their monuments. The 16th Maine, for instance, could have put their monument here, but they put it on the road where there was access, and they chose to memorialize their desperate stand on the Mummasburg Road rather than the capture of the remnants of the regiment.

Mr. SYNAR. Mr. Frassanito, we are going to get through this in questions, go through the slides and tell us what they are.

Mr. FRASSANITO. This is a very important slide. I took this in November 1971. Little did I realize this would be one of the last documents of what the cut looked like. The cut was acquired by the Federal Government in 1909.

This area on the right is the excavated area. This is a shot that was taken in late April, late February or early March 1991, and this will give you an idea if you realize how sensitive that site was, the horror that I felt seeing this hallowed ground being treated like a junkyard. Another shot of the excavation, this was taken in August 1991.

You see how they are just cutting that cliff straight down. Obviously that is going to lead to erosion problems. This photograph was taken this past March, and it shows the wall as it appears today. Had this project been properly studied with a civil engineer, you would not have had the erosion problem, you wouldn't have had one gabion wall and then another gabion wall, and we don't know whether this is going to work or not, only time will tell, and this photograph was taken in October 1991, showing again the sheer cliff, and this was taken in June 1993, and you see the result of very poor planning and no engineering.

The wall, the cliff was crumbling right onto the railroad tracks. Another shot, this is the first gabion wall, this was taken in August 1991. You are looking toward the college, and this I have never seen before.

You are again on the top looking toward the college playing fields, and the wall as it appears today, and this is the engine house. I believe it is finally finished or close to completion. A general view from the park land. This was taken in March showing where the two railroad lines, the Gettysburg Railroad and the Chessie System, Chessie on the right, Gettysburg Railroad on the left where they converge, and that is it.

Mr. SYNAR. Thank you very much. I think that gives us a good overview.

**STATEMENT OF KENT MASTERSON BROWN, HISTORIAN,
CHAIRMAN, ADVISORY COMMISSION, GETTYSBURG NA-
TIONAL MILITARY PARK**

Mr. BROWN. Let me state first of all what a pleasure it is to appear here.

By way of background, I am an attorney in Lexington, KY, a graduate of Centre College and Washington & Lee University School of Law.

Aside from my business of the practice of law, I have spent virtually my entire lifetime studying the American Civil War and writing and lecturing in that field, and very briefly I was the creator and first editor of the magazine "The Civil War." I have published a biography of Lt. Alonzo Hereford Cushing in a book called "Cushing of Gettysburg: The Story of a Union Artillery Commander."

Currently I am handing in the manuscript to Chapel Hill on "Lee's Retreat From Gettysburg," the only work I think that has ever been done on Lee's operations after the Battle of Gettysburg concluded, and I am also working on a biography of Gen. George Pickett for the University Press of Kentucky.

In terms of preservation, I have been rather active. I am chairman of the Perryville Battlefield Commission in Kentucky, and this is the organization that got the \$2.5 million of ISTEA money to buy land to preserve and protect the Perryville battlefield.

With respect to Gettysburg, that is where I have spent most of my time and most of my energy over the years. I have been a director of the Gettysburg Battlefield Preservation Association, a founding director of the Friends of the National Parks, and am currently the Chairman of the Gettysburg National Military Park Advisory Commission, the Commission created by this Congress in Public Law 101-377 to oversee the boundary that was brought into the park and to assist the Department of the Interior in park management.

My job here today is really to give you an oversight of some history on the first day of the Battle of Gettysburg with reference to the Seminary Ridge railroad cut. I have provided a written statement which I am not going to read, obviously. I will only hit a few high points so that we can move through quickly. I would let my written statement stand fundamentally for itself along with the attachments and the maps and the photography that is with it.

Generally speaking, Mr. Chairman, one can look at the importance of this railroad cut, first, through the eyes of the soldiers in Lysander Cutler's brigade of William Wadsworth's division of the First Corps. These troops came on to the battlefield at about 10 in the morning on July 1. Gen. John Buford's two brigades of cavalry had been locked in an engagement with two brigades of Confederate infantry in Harry Heth's division and had held, and of course were holding, that land west of Gettysburg which was critical to John Reynolds, who was commanding the left wing of the Army of the Potomac simply because if Lee was going to throw his entire weight into this fight, he recognized that the few elements ahead of the Army of the Potomac, which was then scattered over seven or eight different towns, could withdraw to high ground east and south of Gettysburg, if they had to, and there make a stand by

nightfall. So, the holding of this ground west of Gettysburg probably was the most important thing that happened in the Battle of Gettysburg. But for the action on the first day, there would have been no Union victory at Gettysburg.

Two brigades in Wadsworth's division, Solomon Meredith's iron brigade and Lysander Cutler's brigade, came on the field about 10. John Reynolds was killed in action when he was trying to put in some elements of Meredith's brigade near McPherson's Woods, but looking just quickly at Lysander Cutler, he sent his brigade north of the Chambersburg Pike, to positions then actually in front of the railroad cut.

Two of his regiments—the 95th New York and the 14th Brooklyn—moved off to the left, south of the railroad to support Hall's Second Maine battery. The remaining elements of the brigade were along the north side of the railroad cut facing Joe Davis' brigade.

That morning Davis' brigade assaulted as did James J. Archer's brigade, south of the Chambersburg Pike. There was a horrific engagement out in the fields, from which Cutler ordered a withdrawal. All of those troops withdraw except the 147th New York which was terribly cut up.

They withdrew back to this railroad cut, and as they were withdrawing back to this railroad cut along Seminary Ridge and Oak Ridge, a railroad cut in front of them, a cut through a small ridge, known as the Ripple that comes off of Seminary Ridge became the scene of intense fighting.

As Davis' brigade flanked Cutler, an element of Wadsworth's other brigade, Solomon Meredith's—the 6th Wisconsin—along with the 14th Brooklyn and the 95th New York of Cutler's brigade came into that cut and fought Davis' brigade and beat them back.

That ended the first tragic episode involving Cutler's brigade on the fields west of Gettysburg. Shortly thereafter they received signals of troops moving in from the north. Those were Richard Ewell's troops, the Second Corps of the Army of Northern Virginia, and, in particular, Robert E. Rodes's division of five brigades. Those five brigades assaulted south.

The first brigade to come into the action in front of Cutler was Alfred Iverson's brigade, all North Carolinians; it advanced without skirmishers. They got enfiladed by John Cleveland Robinson's two Union brigades north on Seminary Ridge, north of Cutler.

Those were Baxter's and Paul's brigades, and Cutler then moved his shattered little brigade out into the fields in front of this cut and resisted Iverson. Iverson's brigade was smashed. It withdrew in disorder, leaving enormous numbers of dead and wounded, and it was virtually taken out of the fight. But behind Iverson, came yet more Confederate brigades out of R. E. Rodes' division; one was Junius Daniel's. And Junius Daniel's brigade came down south in the valley between Seminary Ridge and McPherson's Ridge only to be met by the fire of the "Bogus Bucktails," Roy Stone's brigade, that has just arrived on the battlefield, and it was positioned along the Chambersburg Pike.

It received direct fire from them and then it received an enfilading fire again from Lysander Cutler's brigade. Now, the fighting came to kind of a standstill. Daniel's brigade was broken, sent back, and it was not until later in the afternoon that William

Dorsey Pender's Confederate division came to the aid of Harry Heth, whose division has been embattled all morning long, and, as Dorsey Pender's division came on to the field to replace Harry Heth, he also had to face not only the shattered remnants of Wadsworth's division, Rowley's division and John Cleveland Robinson's division along Seminary Ridge, but the placement of additional artillery, one battery of which was Stewart's Battery B of the 4th U.S. Artillery. Battery B was divided into two sections. One section was positioned south of this railroad cut, a three-gun section, the other was positioned north of this railroad cut. The section north of the railroad cut is commanded by Captain Stewart himself.

Now, one thing I think we all must remember is that armies fighting in the field are not only lineal in the sense that they form a long line, but they are also deep. There are aid stations, hospitals, supply lines, quartermasters, all those people that supply those troops up in the front, and, with an artillery battery like Stewart's, it is deep because its caissons and its limbers are behind it as well as its reserve trains.

Behind this railroad cut, actually on the eastern face of it—Stewart's guns are on the western face—are all the limbers and caissons for these six guns of Stewart's battery, so the entire cut is occupied by Federal troops on both sides.

This is what Mr. Frassanito was referring to as being the most desperate and bloody fighting that General Scales had ever remembered in his years in the war. A brigade commander in Dorsey Pender's division, Scales assaulted really what is the left side or the south side of the cut. Junius Daniel and the rest of the brigades of Robert E. Rodes' division continued to assault down Seminary Ridge, striking John Cleveland Robinson's troops along the Mummasburg Road, forcing them ever south toward the railroad cut. Junius Daniel again threatened the north side of the railroad cut where poor Lysander Cutler's brigade still held. By this time, Cutler's men, along with the 6th Wisconsin, had actually taken up a position inside the cut itself.

As this engagement continued through the late afternoon hours, it became clear that the Union Army was going to collapse. The 11th Corps on the plain north of Gettysburg had already been overlapped and was collapsing. With the 11th Corps collapsing, that meant two divisions of Richard Ewell's troops would gain the rear of the 1st Corps, west of Gettysburg.

There was nothing else for those troops to do but withdraw, particularly John Cleveland Robinson's troops up by the Mummasburg Road. They were being assailed by at least four different Confederate brigades, and those were much larger brigades than Union brigades, as well as enormous numbers of field artillery. As those elements of Robinson's troops on the north end toward Oak Hill began to collapse, this is when the episode of the 16th Maine occurred.

The 16th Maine was told by John Robinson to stand where it was. "You are the rear guard," he said. The colonel told his men, "You know what this means." Obviously it meant death or capture.

That little regiment continued to form the rear guard all the way down Seminary Ridge until it reached the railroad cut, allowing the rest of the division to escape, and in that last gallant act on

the lip of that railroad cut, the 16th Maine men, those who were left, ripped their flags from the staffs, tore them up and put them in their blouses. They were the last unit to leave the Seminary Ridge line.

Stewart's battery fought until it literally expended all its ammunition, and until the lines were overwhelmed. It withdrew around the cut and through the cut. Lysander Cutler's brigade withdrew through the cut, and Cutler's horse itself was wounded in that cut. That was the first horse Lysander Cutler would lose during the day.

Mr. SYNAR. Mr. Brown, I apologize, but I am going to have to ask you to summarize at this point in the next 30 seconds. We have given you twice the amount of time we usually do. We know how easy it is to get enthusiastic.

Mr. BROWN. I am sorry. I would only say this, as I have stated in my written statement, Mr. Chairman, I don't make an argument that the railroad cut is the most important feature on the Gettysburg battlefield. I make the argument that it is every bit as important as any other site on this battlefield, and, certainly, just its history illustrates its worth in preservation.

Thank you, sir.

[The prepared statement of Mr. Brown follows:]

TESTIMONY
OF
KENT MASTERSON BROWN
BEFORE THE
SUBCOMMITTEE ON
ENVIRONMENT, ENERGY AND NATURAL RESOURCES
OF THE
GOVERNMENT OPERATIONS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

MR. CHAIRMAN; MEMBERS OF THE SUBCOMMITTEE:

PERSONAL BACKGROUND

By way of introduction, I am Kent Masterson Brown, an attorney from Lexington, Kentucky. I am a graduate of the Centre College of Kentucky (B.A., 1971) and the Washington & Lee University School of Law (J.D., 1974). For virtually my entire life time I have been a student of the American Civil War, the fiery epoch of American history that I have come to understand, both as a lawyer practicing in the field of constitutional law and as a historian, was truly the nation's defining event. It defined who we are as a people and how we govern ourselves. To understand the era's importance to every American citizen, its study should be a central pillar of our educational effort. The fields where the war was fought must be protected and preserved lest we lose, for future generations, the means by which that war may be understood. No engagement of the war was viewed by contemporaries then, and has been viewed by historians in recent times, as more pivotal to the outcome of the conflict than the Battle of Gettysburg. Because of its magnitude

and strategic results, Gettysburg remains the "high water mark of the Confederacy."

My own work in the field of Civil War history has crossed the full spectrum of writing, lecturing and historic preservation. I have served as an associate editor of the *Lincoln Herald*, the quarterly history publication of Lincoln Memorial University. I was the founder and first editor-in-chief of the magazine, *The Civil War*. In conjunction with *The Civil War*, I created the Civil War Society, an educational organization which sponsored (and still sponsors) lectures and seminars on Civil War topics all across the country. In addition to writing a large number of scholarly articles in history magazines and journals, I have also lectured on Civil War history in virtually every state in the nation.

Last fall I published my first book entitled, *Cushing of Gettysburg: The Story of a Union Artillery Commander* (University Press of Kentucky), the biography of a hero of the Battle of Gettysburg, Lt. Alonzo H. Cushing. This fall I will complete my second work, *Lee's Retreat from Gettysburg*, for the University of North Carolina Press. It is the first comprehensive work ever done on the subject. In addition, I am under agreement to write the biography of Gen. George E. Pickett for the University Press of Kentucky.

I have been active in the field of preservation for many years. First, the founder and President of the Perryville Battlefield Preservation Association, and, then, named by the Governor of the Commonwealth of Kentucky to be Chairman of the

Perryville Battlefield Commission, I have been instrumental in creating a coalition of federal, state and local governments along with private interests to obtain in 1992 a \$2.5 million ISTEA grant to purchase lands for the Perryville Battlefield site in Kentucky which the Perryville Battlefield Commission is now administering.

It is to the Gettysburg Battlefield where most of my efforts have been directed over the years. I was a **director** of the Gettysburg Battlefield Preservation Association, a founding director of the Friends of the National Parks at Gettysburg, and was named in 1991 a member of the Gettysburg National Military Park Advisory Commission by Secretary Manuel Lujan, a commission created by an Act of Congress, Pub. L. 101-377, to advise the Secretary of the Interior on park management and to oversee the protection of the new boundary Congress designated. I serve as the Chairman of that commission. (See: *Curriculum Vitae*)

**NARRATIVE OF EVENTS OF THE BATTLE OF GETTYSBURG
RELATING TO THE RAILROAD CUT THROUGH SEMINARY RIDGE**

I. The First Day

The Subcommittee has requested that I present to it testimony regarding the historical significance of the railroad cut through Seminary Ridge, west of Gettysburg, in its investigation of the circumstances surrounding the transfer of 7.5 acres of land from the Gettysburg National Military Park to Gettysburg College which resulted in the destruction of the northern and eastern face of that historic railroad cut.

It goes without saying that any understanding the outcome of the Battle of Gettysburg is impossible without knowing the events on July 1, 1863, the first day of that cataclysmic engagement. And, understanding the action on the first day--like the action on any battlefield--is not possible unless one is able to fully comprehend the terrain over which the contending armies fought. It stands to reason that the northern extension of Seminary Ridge, and the cut made through that imposing physical feature by the unfinished Tapeworm Railroad, played critical roles in the tactical movements during the battle. The narrative which follows describes the action on July 1, 1863 as well as the Confederate withdrawal to Seminary Ridge on July 3-5, 1863 with emphasis on the use of the railroad cut through Seminary Ridge by both armies. The narrative is not to be construed as asserting that that cut is the most historic site on the field. Rather, a case is made that it is as historic as any other feature within the Gettysburg National Military Park and its new boundary. The Battle of Gettysburg was enormous in scope, involving nearly 150,000 combatants and harvesting nearly 51,000 casualties. No location along those hallowed fields bears any greater or lesser significance than that railroad cut. Heroism and suffering were found in abundance everywhere. (Figures 6 and 7)

The Battle of Gettysburg was the climax of Gen. Robert E. Lee's invasion of the North which began in early June, 1863. From his positions in front of Fredricksburg, Virginia(after the Battle of Chancellorsville), Lee, with three large reorganized corps of

infantry and artillery and a cavalry corps (nearly 65,000 troops), moved north by first sending Lt. Gen. Richard S. Ewell's Second Corps "down" (north) the Shenandoah Valley where he reduced the Union garrisons at Winchester and Martinsburg on June 14 and 15, and then crossed the Potomac River. Elements of Ewell's Corps moved north to Carlisle, Pennsylvania, and northeast through Gettysburg to Wrightsville, Pennsylvania, on the Susquehanna River. Following Ewell, the two remaining Corps, first, Lt. Gen. James Longstreet's First Corps, followed by Lt. Gen. Ambrose Powell Hill's Third Corps, withdrew from Fredricksburg and moved north to positions along the eastern face of the Blue Ridge Mountains in northern Virginia.

The Union Army of the Potomac did not remain idle in the face of Lee's bold movements. Maj. Gen. Joseph Hooker, Commander of the Army of the Potomac, moved his enormous army of seven corps (nearly 90,000 troops) northward in an effort to cover and protect the approaches to Washington, D.C., and Baltimore.

By June 29, 1863, Lee's entire Army of Northern Virginia had crossed the Potomac, moved up the Cumberland Valley, and was concentrating along the eastern face of the South Mountain range near Cashtown, Pennsylvania, eight miles west of Gettysburg. Hill's Corps was moving toward Cashtown from Chambersburg, Pennsylvania, with Longstreet's Corps behind. Ewell's Corps, by June 29, was preparing to move back toward Cashtown from Carlisle and Wrightsville under urgent orders from Lee forwarded the night of June 27.

By June 28, Hooker's seven army corps (the First under the command of Maj. Gen. John F. Reynolds, the Second under the command of Maj. Gen. Winfield Scott Hancock, the Third under the command of Maj. Gen. Daniel E. Sickles, the Fifth under the command of Maj. Gen. George G. Meade, the Sixth under the command of Maj. Gen. John Sedgwick, the Eleventh under the command of Maj. Gen. Oliver O. Howard and the Twelfth under the command of Maj. Gen. Henry W. Slocum, along with a cavalry corps and reserve artillery), had reached the vicinity of Middletown and Frederick, Maryland. There, on June 28, Gen. Hooker had been relieved of command and replaced by Gen. Meade. By the next day, the seven corps of the Army of the Potomac began movements toward Emmitsburg, Taneytown, Uniontown, Union Mills, Littlestown and Manchester, all towns south and east of Gettysburg.

By July 1, 1863 these two massive armies were within striking distance of one another. Hill's Confederate Corps was at Cashtown, Longstreet's Corps was on the move toward Cashtown from Chambersburg, and Ewell's Corps was moving toward Gettysburg in its effort to rejoin the main army near Cashtown. The Left Wing of the Army of the Potomac, under the command of First Corps commander, Gen. Reynolds, was just south of Gettysburg with his First Corps near Marsh Creek, the Eleventh Corps just north of Emmitsburg, Maryland, and the Third Corps at Emmitsburg. Ahead of Reynolds were two brigades of cavalry--Col. William Gamble's and Col. Thomas C. Devin's--along with Lt. John Calef's Battery A, 2nd United States Artillery, of the cavalry division commanded by Maj. Gen.

John Buford. These two brigades and their artillery, aware of the presence of Confederate concentrations at Cashtown, set up defensive positions along dominant McPherson's Ridge, three miles west of Gettysburg and just under one mile ahead of Seminary Ridge. Battery A, 2nd United States Artillery, was positioned along, and north of, the Chambersburg Pike. Reynolds's and Buford's object was to resist any Confederate advance eastward and thereby protect the high ground (Culp's Hill, Cemetery Hill and Cemetery Ridge) east of Gettysburg and to their rear as positions to which the Army of the Potomac might fall back and concentrate if Lee attacked in overwhelming force.

After having made a probe toward Gettysburg on June 30, Gen. A. P. Hill (without receiving orders from Lee) determined to send the division of Gen. Henry Heth forward toward Gettysburg from Cashtown on July 1. Heth got under way at about 5 o'clock in the morning with his four brigades, Brig. Gens. James J. Archer's (1st, 7th and 14th Tennessee, 13th Alabama and 5th Alabama Battalion), Joseph Davis's (2nd and 42nd Mississippi and 55th North Carolina), J. Johnston Pettigrew's (11th, 26th, 47th and 52nd North Carolina) and John M. Brockenbrough's (40th, 47th and 55th Virginia and 22nd Virginia Battalion). Archer was in the lead. Behind the infantry moved a battalion of artillery (five batteries) under the command of Col. R. Lindsay Walker.

Facing Buford's dismounted cavalry and artillery, Archer deployed on the south side of the Chambersburg Pike, Davis on the north. Walker deployed his guns along Herr Ridge, about one mile

farther west of McPherson's Ridge, on the north side of the Pike. Pettigrew and Brockenbrough remained in columns on the road. Behind Heth's four brigades, the Confederate division of Maj. Gen. William D. Pender of Hill's Corps was moving up in support from Cashtown, together with the artillery battalion of Col. David G. McIntosh (four batteries).

At about 8 o'clock in the morning of July 1, 1863, Walker's batteries opened fire, and Archer and Davis attacked Buford's dismounted cavalry and artillery west of Gettysburg. The Battle of Gettysburg had begun. For two hours Buford's troopers and their artillery support held the two Confederate infantry brigades in check. (Figure 1)

At 10 o'clock that morning the leading division of Reynolds's First Corps--Maj. Gen. William Wadsworth's (with the brigades of Brig. Gens. Solomon Meredith and Lysander Cutler)--arrived along Seminary Ridge to the relief of Buford after a long march up the Emmitsburg Road. Wadsworth's First Brigade--the "Iron Brigade" under Brig. Gen. Solomon Meredith (2nd and 7th Wisconsin, 19th Indiana and 24th Michigan)--was directed due west on the south side of the Chambersburg Pike, directly toward Archer's charging Confederates. The 6th Wisconsin of Meredith's brigade remained along Seminary Ridge in reserve. Brig. Gen. Lysander Cutler's brigade, after moving "across the railroad" at Seminary Ridge [possibly through the railroad cut], was aligned along the ridge at the railroad cut which is the subject of this hearing. Three regiments--the 76th and 147th New York and 56th Pennsylvania--were

directed ahead, toward Davis's attacking Confederates, north of the Chambersburg Pike, while two regiments--the 95th New York and 14th Brooklyn--were sent along the south side of the pike to the assistance of Meredith's brigade and Capt. James Hall's 2nd Maine Battery, which had been moved into place in relief of Calef's guns. The 7th Indiana of Cutler's brigade was in the rear guarding the trains of the division. (Figure 2)

Gen. Reynolds, arriving on the field with Wadsworth's division, was killed instantly when he was struck by a bullet in the back of the head after placing Capt. Hall's 2nd Maine Battery in position on the north side of the Chambersburg Pike and while leading Meredith's troops into McPherson's Woods. Archer's Confederates were stopped by Meredith's thrust, which overwhelmed Archer's right flank, along a stream called Willoughby Run. Gen. Archer was captured. North of Meredith's position, Gen. Cutler's three regiments along McPherson's Ridge were flanked on their right by Davis's Confederates, forcing all to withdraw except the 147th New York which failed to receive the orders to fall back and which was horribly decimated in the fighting. Cutler's regiments withdrew into and along the railroad cut at Seminary Ridge (the subject of this hearing) as Davis's Confederates pursued. Cutler's regiments along McPherson's Ridge south of the Chambersburg Pike--the 95th New York and 14th Brooklyn--along with Col. Rufus Dawes's 6th Wisconsin of Meredith's brigade, which had been held in reserve along Seminary Ridge, were directed north to meet Davis's breakthrough at a location where the Tapeworm Railroad cut through a

small ridge between McPherson's Ridge and Seminary Ridge, referred to by the late historian, Glenn Tucker, as "the Ripple." In that railroad cut Davis's thrust was halted. From alongside the railroad cut at issue here, the remnants of Cutler's 76th and 147th New York and 56th Pennsylvania poured an enfilading fire into Davis's hard-charging Confederates. (Figure 2)

Maj. Gen. Abner Doubleday, in command of the Union First Corps after the death of Gen. Reynolds, sought to strengthen his position west of Gettysburg. At about 11:30 in the morning, Doubleday's own division (Cols. Chapman Biddle's and Roy Stone's brigades), under the command of Maj. Gen. Thomas Rowley, along with Maj. Gen. John C. Robinson's division (Brig. Gens. Henry Baxter's and Gabriel R. Paul's brigades) arrived on the field. Doubleday directed Col. Chapman R. Biddle's brigade (20th New York, 121st, 142nd and 151st Pennsylvania) of Rowley's division forward to McPherson's Ridge to the left of Meredith's brigade. Col. Roy Stone's brigade (143rd, 149th and 150th Pennsylvania, known as the "Bogus Bucktails") of Rowley's division was directed to Meredith's right, extending to the south side of the Chambersburg Pike and joining Hall's guns. Cutler's brigade was, again, moved forward from the railroad cut at Seminary Ridge to the fields east of and along McPherson's Ridge, on the north side of the Chambersburg Pike. The 14th Brooklyn, along with Col. Dawes's 6th Wisconsin, were directed to positions supporting Hall's guns along McPherson's Ridge, while the 76th, 95th and 147th New York and 56th Pennsylvania moved out from the Seminary Ridge railroad cut to the summit of "the Ripple" between

McPherson's Ridge and Seminary Ridge. Into positions along McPherson's Ridge were sent Capt. G. H. Reynolds's Battery L, 1st New York Light Artillery, and Capt. James H. Cooper's Battery B, 1st Pennsylvania Light Artillery. Capt. G. L. Stevens's 5th Maine Battery was held along Seminary Ridge to respond to any emergency, along with Capt. James Stewart's Battery B, 4th United States Artillery. As Biddle's, Stone's and Cutler's brigades were moving into line, Gen. Heth sent forward his two reserve brigades, Brockenbrough's and Pettigrew's, supported now by the arrival of McIntosh's artillery battalion south of the Chambersburg Pike along Herr Ridge. They attacked at about noon. The Union First Corps line held in bitter and close-order fighting, though, and Heth broke off the attack and commenced an artillery bombardment of the Union lines using both McIntosh's and Walker's battalions. (Figure 3)

For more than four hours, two undersized divisions of the Union First Corps had heroically held their positions west of Gettysburg, using the high ground afforded them to enormous advantage. The battle, though, was rapidly changing. Maj. Gen. Oliver O. Howard's Eleventh Union Corps was seen moving into Gettysburg after marching from Emmitsburg. Gen. Howard, the senior officer on the field, took command of the Left Wing forces on the battlefield, turning command of his Eleventh Corps over to Maj. Gen. Carl Schurz. Schurz's division was ordered north through town to positions protecting the northern approaches to Gettysburg from the Heidlersburg Road to below Oak Hill (the northernmost height

along Seminary Ridge). Maj. Gen. Robinson's division (Baxter's and Paul's brigades) of the Union First Corps was positioned along Seminary Ridge, north of the railroad cut at issue here, all the way to the Mummasburg Road. Baxter's brigade (11th, 88th and 90th Pennsylvania, 83rd and 90th New York and 12th Massachusetts) and Paul's brigade (107th Pennsylvania, 94th and 104th New York and 16th Maine) actually extended their lines along Seminary Ridge and then refused them east along the Mummasburg Road to meet any enemy thrust from the north, and to try to link up with the exposed left flank of Schurz's Eleventh Corps division.

Almost at the same time, the hard-marching Confederate Second Corps of Gen. Ewell, en route to Cashtown from Carlisle and Wrightsville, was moving to the sound of combat under urgent appeals from Gen. A. P. Hill for assistance. By 2:30 in the afternoon, Ewell's leading division, that of Maj. Gen. Robert E. Rodes with five brigades, Brig. Gens. Junius Daniel's (32nd, 43rd, 45th, 53rd North Carolina and 2nd North Carolina Battalion), Stephen D. Ramseur's (2nd, 4th, 14th and 30th North Carolina), Alfred M. Iverson's (5th, 12th, 20th and 23rd North Carolina), Edward A. O'Neal's (3rd, 6th, 12th and 26th Alabama) and George Doles's (4th, 12th, 21st and 44th Georgia with the 5th Alabama*), were massed along Oak Hill, facing south into the right flank of Doubleday's First Corps lines. (Figure 4)

*The 5th Alabama was actually part of O'Neal's brigade.

Iverson and O'Neal, followed by Daniel and Ramseur, attacked Robinson's lines along the Mummasburg Road and the northern reaches of Seminary Ridge. O'Neal was momentarily stopped by heavy gunfire, but Iverson penetrated the fields in front of Seminary Ridge (without adequate skirmish lines) only to be stopped by the furious fire of elements of Robinson's two brigades (Baxter's and Paul's), which moved out into the fields to meet the Confederate advance, and Gen. Cutler's entire brigade, supported by the 6th Wisconsin, which had reformed in front of the railroad cut along Seminary Ridge, and then moved out into the fields to meet Iverson head-on. Iverson was repulsed in a terribly bloody encounter, and his horribly mangled brigade fell back to Oak Hill. (Figure 4)

Gen. Cutler's brigade fell back to the railroad cut through Seminary Ridge once again to regroup. The men were dangerously low of ammunition. Cutler's men were joined by Capt. James Stewart's famed Battery B, 4th United States Artillery. It was around 2:30 or 3:00 in the afternoon. Stewart's battery of six guns was divided into two sections; one three-gun section was positioned on the south side of the railroad cut along Seminary Ridge, and the other three-gun section was positioned on the north side. The limbers and caissons of the guns were positioned along the east slope of the ridge on either side of the cut to avoid exposure to enemy fire. The 6th Wisconsin, at the time Stewart's battery was placed in position, actually held the railroad grading inside the cut through Seminary Ridge.

The Confederate brigades of Gens. Daniel, Ramseur and O'Neal, having advanced behind the decimated brigade of Gen. Iverson, continued the attack. Daniel's brigade, followed by Ramseur's, moved south in front of Seminary Ridge, where, when Daniel reached the Tapeworm Railroad grading, he was met by the gunfire from the refused line of Col. Roy Stone's Union brigade along the Chambersburg Pike, the enfilading fire of Gen. Robinson's division along Seminary Ridge and enfilading fire of Gen. Cutler's hard-fighting brigade in front of the railroad cut through Seminary Ridge. Gen. Daniel, after shifting his brigade from south to east, directed his men toward Cutler's thinned and tired lines. Daniel's attack, wholly unsupported, stalled in the galling rifle and artillery fire. (Figure 5)

Gen. Doles's brigade, the left flank of Rodes's line, struck the hopelessly exposed left flank of the Eleventh Corps in the open fields east of Oak Hill. Elements of Maj. Gen. Jubal A. Early's division of Ewell's Confederate Corps approached the exposed right flank of the Eleventh Corps, adding pressure to those poorly-positioned Union troops. (Figure 5)

By 4:00 o'clock in the afternoon, the situation north and west of Gettysburg had grown desperate for the Union Left Wing. Elements of Rodes's and Early's divisions of Ewell's Corps were pressuring the front and flanks of the Union Eleventh Corps to the point of collapse, while in front of the battered Union First Corps, Gen. Heth's division was replaced by Maj. Gen. William D.

Pender's fresh Confederate division, the brigades of which was moving forward in assault formations. (Figure 5)

Cutler's brigade was nestled on either side of, and in, the railroad cut along Seminary Ridge. The 14th Brooklyn and a portion of the 76th New York and the 147th New York supported Stewart's left gun section near the south bank of the cut, and the 6th Wisconsin, along with a portion of the 76th New York and the 95th New York and 56th Pennsylvania held the ridge north of the cut, supporting Stewart's right gun section. Cutler's men were virtually out of ammunition. As Pender's Confederate division slammed ahead, the faltering Confederate brigades of Gens. Daniel, Ramseur and O'Neal renewed their pressure against the First Corps lines from the Seminary Ridge railroad cut all the way to the Mummasburg Road. The fighting which ensued between Stewart's battery, positioned on either side of the railroad cut, and the attacking Confederates was recalled by one veteran of the battery as "probably the most desperate fight ever waged between artillery and infantry at close range without a particle of cover on either side." The men of the 6th Wisconsin and 11th Pennsylvania of Baxter's brigade, the veteran remembered, "actually crawled up over the bank of the cut or behind the rail fence in rear of Stewart's caissons and joined their musketry with [Stewart's] canister, while from the north side of the cut flashed the chain-lightning of the Old Man's [Capt. Stewart] half-battery in one solid streak." (Figure 5)

The Confederate pressure was too great, however. The First Corps lines along McPherson's Ridge, south of the Chambersburg Pike, fell back to Seminary Ridge in the face of Pender's enormous assault, and the Eleventh Corps lines north of Gettysburg--hopelessly outflanked by Gen. Doles's brigade and Gen. Early's division--collapsed. As the Union Eleventh Corps fell back, the Union First Corps along Seminary Ridge was threatened by the enemy seizing its rear. Robinson's division, along the northern reaches of Seminary Ridge, in the face of punishing blows from O'Neal's and Ramseur's brigades, slowly gave way, falling back upon Cutler's battle-weary soldiers who, by now, had taken up positions inside the railroad cut at Seminary Ridge, facing north. They were being assailed in that cut by not only Daniel's brigade north of the cut, but Brig. Gen. Alfred M. Scales's brigade (13th, 16th, 22nd, 34th and 38th North Carolina) of Pender's division south of the cut. Gen. Cutler used the embankments of the railroad cut through Seminary Ridge as momentary cover from the rain of shells and shrapnel so that he could reform his remaining regiments. He soon received the order to withdraw back through the town of Gettysburg. Cutler thereupon ordered his battered but heroic little brigade through the railroad cut. While moving out of the cut, Cutler's horse was shot down along the railroad grading. Stewart's Battery limbered up. Its left section moved from the south side of the railroad cut to the Chambersburg Pike. The right section, north of the cut, rumbled over Seminary Ridge, crossed the railroad grading, and then moved onto the Chambersburg Pike. (Figure 5)

The First Corps was in full retreat. From Seminary Ridge, the shattered Union commands steadily withdrew in the face of Pender's, Daniel's, Ramseur's and O'Neal's onslaught. The Chambersburg Pike was jammed with thousands of fleeing soldiers, officers on horseback and artillery heading toward the town and the high ground to the east.

The last act along the railroad cut through Seminary Ridge was probably one of the most dramatic of the battle. As Gen. Robinson's brigades gave way along the Mummasburg Road and fell back south toward the Chambersburg Pike, Robinson approached the men of the 16th Maine, exhorting, "Advance and hold that hill at any cost." The men were directed to the road where they were to form the rear guard protecting the withdrawal of Baxter's and Paul's brigades. "Boys, you know what that means!" shouted the colonel of the regiment. As O'Neal's and Ramseur's Confederate brigades closed in, the men of the 16th Maine poured volley-after-volley into the butternut and grey ranks. Men fell by the scores. Yet, the soldiers of the 16th Maine held their line, but steadily yielded ground, as the remainder of their division withdrew down Seminary Ridge to the railroad cut and onto the Chambersburg Pike. The 16th Maine slowly retired to the railroad cut. It was the last First Corps regiment to leave the field. The enemy pressured the Maine men from front and flank. The volleys of the 16th Maine were unable to halt the enormous enemy lines rapidly closing in on them. Death or capture faced them. A veteran recalled the 16th Maine's final action along the eastern face of the railroad cut:

In this last stand the Sixteenth's forlorn hope ended with a deed worthy of remembrance among the gallant deeds crowded so thickly into this day of battle. The two long lines of gray were closing upon the handful of men from Maine. The annihilation of the regiment as an organization seemed inevitable and immediate. Yet in that moment of the most trying expectations that can come to any soldiers, the men of the Sixteenth performed an act which may convey to this generation some of the spirit animating the volunteers who repelled Lee's invasion of 1863. The two flags of the regiment, the stars and stripes and the flag of Maine, the old pine tree on the golden shield in the field of blue, were taken from their staves, torn into pieces and secreted about the persons of the officers and men. These fragments were carried through Southern prisons and finally home to Maine, where they are still treasured as precious relics. . . .

As the First Corps abandoned Seminary Ridge, Rodes's and Pender's jubilant legions swarmed down the Chambersburg Pike and through the railroad cut. The first Confederate troops to enter the town square in Gettysburg were those of the 1st South Carolina of Col. Abner Perrin's brigade. They, followed by other Confederate brigades, moved down the railroad grading instead of the jammed Chambersburg Pike, all the way to the heart of the town. They raised their Palmetto flag at the town square.

II. July 3-5, 1863

The Union Army of the Potomac rallied along the heights east and south of Gettysburg on the night of July 1, 1863. By July 2, that Union line, reinforced by the Second, Third, Fifth and Twelfth Corps, extended from Culp's Hill to Cemetery Hill, down Cemetery Ridge, to the bases of the round tops. The line was shaped like a "fishhook". On July 2, Lee assaulted both Union flanks. Augmented by the arrival of the Sixth Corps, the Army of the Potomac held after assaults against Culp's Hill, Cemetery Hill, Cemetery Ridge and Little Round Top. On July 3, 1863, after attacking the trenches along Culp's Hill once again, Lee launched a direct attack with two divisions and a demi-division against the Union center. The attacks failed. Lee, thereupon, determined to withdraw.

At about 10:30 o'clock in the evening of July 3 the Army of Northern Virginia began its movement to reform its lines in anticipation of its retreat. Pursuant to Gen. Lee's oral directives, Lt. Gen. Richard S. Ewell's Second Corps, which had fought to take Culp's and Cemetery Hills on July 2 and 3, 1863 and occupied the town of Gettysburg, withdrew from its battlelines east of Gettysburg, and fell back through the town, taking up defensive positions, facing east, along Seminary Ridge, from Oak Hill all the way to the Fairfield Road. On the left, Maj. Gen. Edward "Allegheny" Johnson's division of Ewell's Corps held the defuse line at Oak Hill. Joining Johnson's right was Gen. Robert E. Rodes's division. Forming a reserve along McPherson's Ridge on

either side of the unfinished railroad line was Gen. Jubal A. Early's division. (Figure 8)

Rodes's Division held the defense line along Seminary Ridge which was actually divided by the railroad cut at issue here. Doles's brigade held the ridge on either side of the cut. Joining Doles's brigade were elements of the Second Corps artillery battalion positioned along the ridge line. On Doles's right was O'Neal and then, extending to the right, Ramseur, and finally Iverson, whose right flank touched the Fairfield Road and joined the left flank of A. P. Hill's Third Corps (with Pender's, Heth's and Maj. Gen. Richard H. Anderson's divisions extending from left to right down [south] Seminary Ridge). Lt. Gen. James Longstreet's First Corps held the Confederate defenses along Seminary Ridge to the right of A. P. Hill, extending all the way to the Emmitsburg Road, with Maj. Gen. Lafayette McLaw's division on the right of Gen. Anderson's, and Maj. Gen. John B. Hood's division refused back to protect the right flank from any attack from the south. (Figure 8)

Along Seminary Ridge Confederate troops were instructed to entrench themselves and throw up heavy breastworks. All through the night Lee's army prepared its defensive positions. From the Fairfield Road north to Oak Hill, Rodes's and Johnson's divisions dug rifle pits and piled fence rails along the summit of the ridge to make breastworks. On either side of the railroad cut at issue here, those breastworks, together with artillery lunettes, were

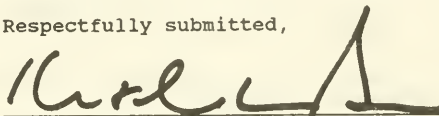
prepared as Lee's army braced itself for any possible attack Meade's Army of the Potomac might make. (Figure 9)

The railroad cut at issue here, which had been used by Cutler's Union First Corps brigade as a rallying point from which to launch at least three distinct attacks against Heth's and Pender's Confederates approaching from the west and Rodes's division from the north, and as the position of Stewart's Battery B, 4th U.S. Artillery, was now a Confederate defensive position as the Army of Northern Virginia faced east along its summit in anticipation of the Union attack.

Lee began his withdrawal from Gettysburg in a driving rainstorm at around 4:00 in the afternoon of July 4, 1863, using the Fairfield Road. A 17-mile long wagon train of wounded left Gettysburg by way of the Chambersburg Road. Ewell's Corps was the last corps in the Army of Northern Virginia to leave Gettysburg. Its defenselines from Oak Hill and along Seminary Ridge, through the railroad cut to the Fairfield Road, were held until nearly 5:00 in the afternoon on July 5, 1863, when they were finally abandoned.

May 9, 1994.

Respectfully submitted,



KENT MASTERSON BROWN

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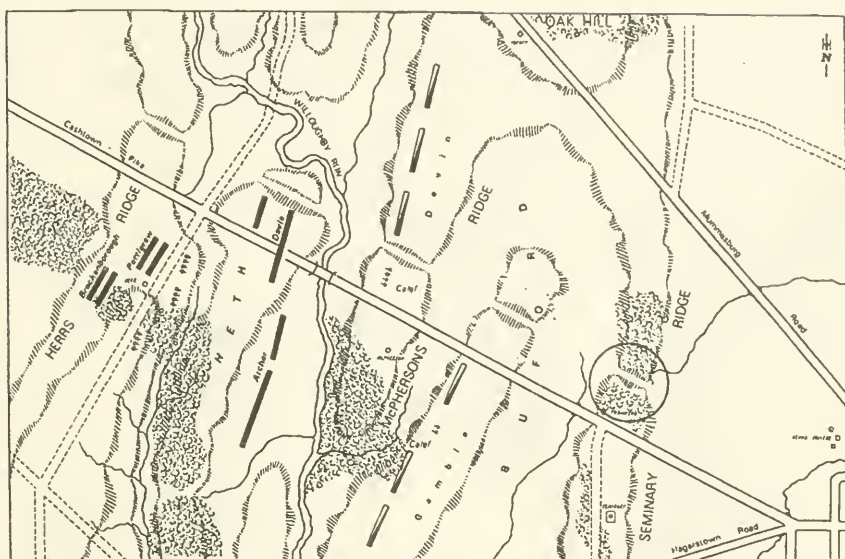


FIGURE 1

July 1, 1863 at 8:00 a.m. Gen. Buford's dismounted cavalry hold off the attacks of Archer and Davis along McPherson's Ridge. Railroad cut through Seminary Ridge circled.

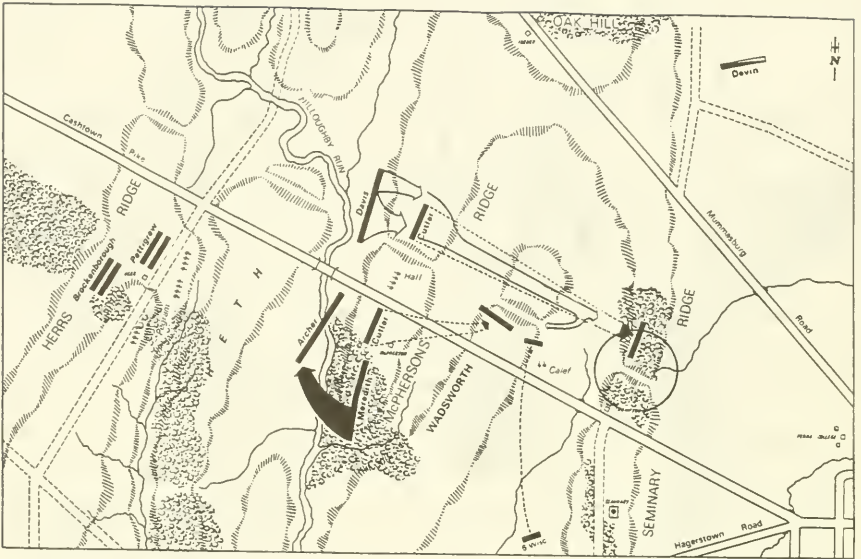


FIGURE 2

July 1, 1863 at 10:00 a.m. Wadsworth's Division (Meredith's and Cutler's brigades) hold back Archer's and Davis's final assaults along McPherson's Ridge and "the Ripple". Railroad cut through Seminary Ridge circled.

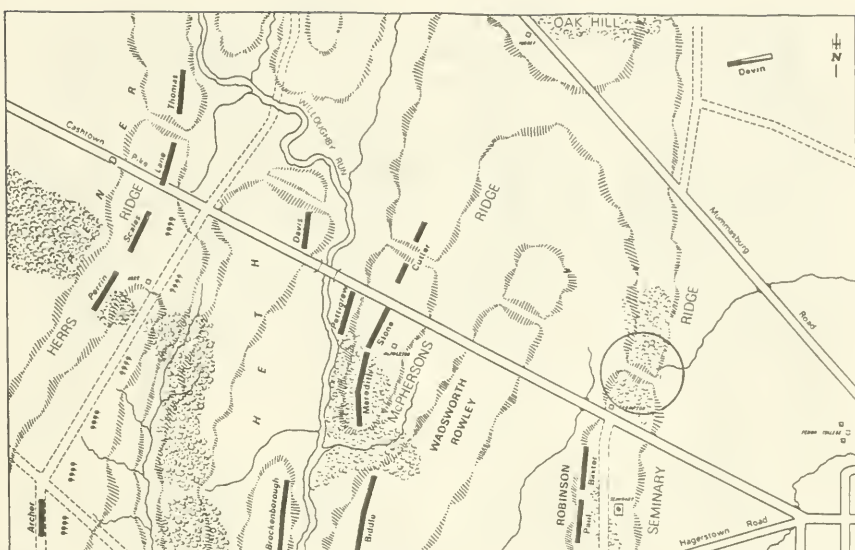


FIGURE 3

July 1, 1863 at 12 Noon. Wadsworth's and Rowley's divisions hold back the attacks of Brockenbrough and Pettigrew along McPherson's Ridge. Railroad cut through Seminary Ridge circled.

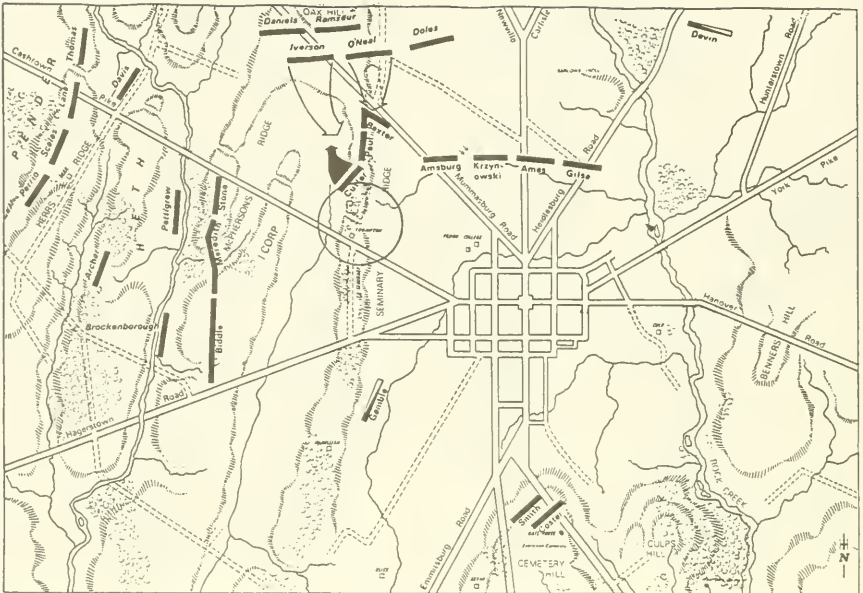


FIGURE 4

July 1, 1863 at 2:30 p.m. Robinson's division, with Cutler's brigade, stop the attacks of Rodes's five brigades at Oak Hill and Seminary Ridge. Schurz's Eleventh Corps division deployed north of Gettysburg. Railroad cut through Seminary Ridge circled.

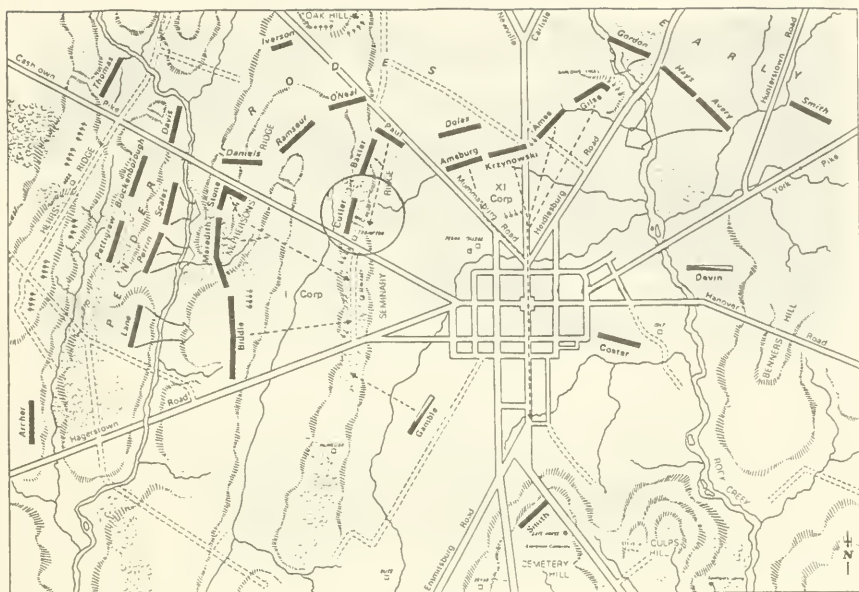


FIGURE 5

July 1, 1863 at 4:00 p.m. Pender's, Rodes's and Early's divisions finally crush the First and Eleventh Corps west and north of Gettysburg. Railroad cut through Seminary Ridge Circled.



FIGURE 6

Chambersburg Pike looking west. The Lutheran Theological Seminary is visible at left and the eastern entrance to the Seminary Ridge railroad cut is seen at right. Keane Archives.

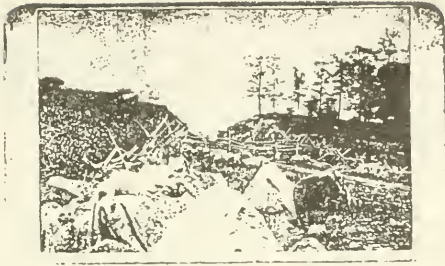


FIGURE 7

A rare photograph of the eastern entrance to the Seminary Ridge railroad cut. Stewart's battery's limbers and caissons were positioned on either side of the cut shown here. Gen. Cutler lost his first horse along the railroad grading visible after aligning his brigade inside the cut. Photo by William Tipton. Collection of Kent Masterson Brown.

FIGURE 8

Defensive positions along Seminary Ridge on July 3 through July 5, 1863. Rodes's division straddles the Seminary Ridge railroad cut. Railroad cut through Seminary Ridge circled. Brown, Kent Masterson, Lee's Retreat From Gettysburg.

SITUATION
DAWN, JULY 4, 1863
AT GETTYSBURG

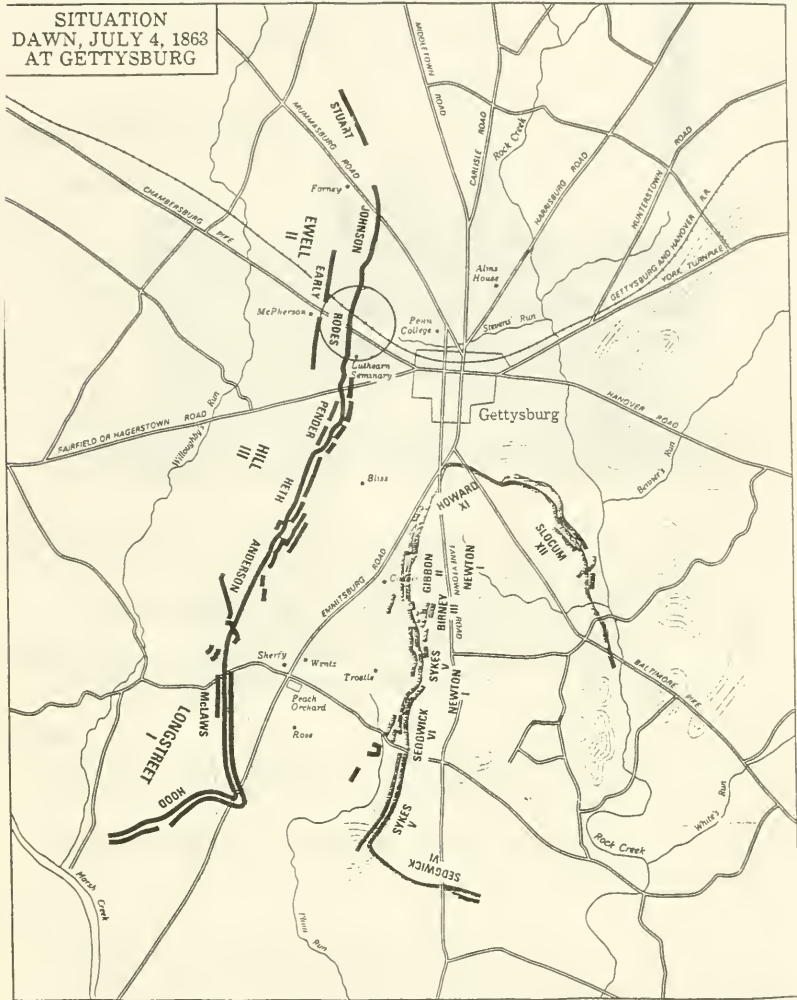




FIGURE 9

Brady photograph showing three captured Confederates. Taken along Seminary Ridge south of the railroad cut, the fence rail breastworks constructed on the night of July 3 and the morning of July 4, 1863 by Rodes's division are plainly visible. *Library of Congress.*

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Profession:

Lawyer (private practice of law, in Lexington, Kentucky, practicing in the fields of Constitutional law and Health law) 1974 to the present.

Emphasis of law practice is in the fields of American Constitutional law and Health law.

Bar Affiliations:

Supreme Court of the United States (1978);
Supreme Court of Kentucky (1974);
United States Courts of Appeals for the Sixth (1975), Fifth (1989), Eleventh (1985) and District of Columbia (1993) Circuits;
United States District Courts for the Eastern District of Kentucky (1977) and Central District of Illinois (1985).

Writer:

Cushing of Gettysburg: Lt. Alonzo H. Cushing and the American Civil War (Released by the University Press of Kentucky in November, 1993)

Lee's Retreat From Gettysburg, (To be published by the University of North Carolina Press)

A Biography of General George E. Pickett (To be Published by the University Press of Kentucky in 1995)

Contributor, *The Encyclopedia of the Confederacy* (Simon & Schuster Press)

Originator and Editor-in-Chief, 1981-1988, *The Civil War*. The Magazine of the Civil War Society, Berryville, Virginia.

Contributing Editor, *The Lincoln Herald*, History Quarterly of Lincoln Memorial University, 1979-1989

Written numerous articles on the Battle of Gettysburg and the Civil War in general which have appeared in *The Civil War*, *The Lincoln Herald*, *The Filson Club Quarterly*, *The Register* (Quarterly Journal of the Kentucky Historical Society), *The Pointer View* (Newspaper of the United States Military Academy, West Point, New York). Article on the migration of the Cushing family will appear in the fall of 1993 in the *Magazine of Wisconsin History*

Among the published articles are:

"Lee at Gettysburg: The Man, The Myth, The Recriminations," Vol. I, *Virginia Country's Civil War* (1983)

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Awards:

Robert E. Lee Award for Historical Journalism, Military Order of Stars and Bars

S.A. Cunningham Award for the Writing of Southern History

Special Award for the Creation of *The Civil War* and the Civil War Society. Given by the Civil War Society, 1990

The State Historical Society of Wisconsin, Book Award of Merit for *Cushing of Gettysburg*, April, 1994

Speaker:

Spoken on the Battle of Gettysburg and Civil War History at numerous historical societies, Civil War roundtables and other organizations, including: The Filson Club, Louisville, Kentucky, Civil War Roundtable of New York City, Louisville Civil War Roundtable (3 times), Kentucky Civil War Roundtable (twice), Indianapolis Civil War Roundtable (twice), Knoxville Civil War Roundtable, Kalamazoo Civil War Roundtable (twice), Midwest Conference of Civil War Roundtables (twice), Cincinnati Civil War Roundtable (twice), Madison County Indiana Civil War Roundtable, Abraham Lincoln Group, Washington, D.C., Abraham Lincoln Civil War Roundtable, Detroit, Michigan, Chicago Civil War Roundtable, Chautauqua County Historical Society (New York), Cumberland Valley Seminar (Chambersburg, PA), Gettysburg Heritage Week (jointly sponsored by the Gettysburg Travel Council and the Gettysburg National Military Park) (six times), Indiana Historical Society Convention, Antietam National Military Park, Convention UDC, Dedication Pee Wee Valley, Kentucky Cemetery (three times), Commemoration, Orphan Brigade Reunion, Bardstown, Kentucky (twice)

Originator, moderator and speaker at all seminars and symposiums sponsored by *The Civil War* and *The Civil War Society* from 1982 until 1988, including seminars on "The Shenandoah Valley Campaign, 1864," "The Shenandoah Valley Campaign, 1862," "Antietam Campaign," "The Peninsula Campaign," "Gettysburg" (twice), "Chattanooga and Chickamauga Campaign," "Second Manasses," "The Invasion of Kentucky." Conduct annual walking tours of the Battle of Gettysburg. Faculty Member and Advisor, American Blue & Gray Association, 1990 to present

Preservation:

Chairman, Gettysburg National Military Park Advisory Commission (appointed by the Secretary of the Department of the Interior, Manuel Lujan), 1991 to present

Chairman, Perryville Battlefield Commission, 1993 to present (appointed by Governor Brerton Jones)

Director, Friends of the National Parks at Gettysburg, 1989 to present

Director, Gettysburg Battlefield Preservation Association, 1985-1987

Founder and President, Perryville Battlefield Preservation Association (presently under contract with the United States Department of the Interior to preserve the Perryville Battlefield under the Battlefield Protective Program of the Secretary of the Interior)

Chairman, Civil War Soldiers Memorial Foundation of the Civil War Society (prepared and installed in 1987 two large granite monuments on the Perryville Battlefield which identify each Federal and Confederate regiment, battalion and artillery battery which participated in the battle within the confines of the park)

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Lawyer (private practice of law, in Lexington, Kentucky, practicing in the fields of Constitutional law and Health law) 1974 to the present.

Bar Affiliations:

Supreme Court of the United States (1978); Supreme Court of Kentucky (1974); United States Courts of Appeals for the Sixth (1975), Fifth (1989), Eleventh (1985) and District of Columbia (1993) Circuits; United States District Courts for the Eastern District of Kentucky (1977) and Central District of Illinois (1985).

Professional Associations:

National Health Lawyers Association and American Society of Law and Medicine

Scholarly Writing and Lecturing in Health Law Field:

"PPOs An Antitrust Analysis", 1984
Preventive Law Reporter

"Hospital Liability for Premature Discharge,"
3 *Prospective Payment Survival*, January, 1985

"Preventive Law in Health Care," 1984
Preventive Law Reporter

"The Law of Peer Review"
Lecture, National Health Lawyers Association, Spring, 1980, Toronto, Canada

"PROs And the Law," Seminar Lectures, Dallas, Texas, January, 1988; Chicago, Illinois, May, 1988; San Francisco, California, October, 1988

"The Physician and Medicare," Seminar Lectures, Atlanta, Georgia, Fall, 1988, Columbus, Ohio, May 1989, Orlando, Florida, September, 1989, Decatur, Georgia, December, 1988 and 1989, Toledo, Ohio, April, 1990, Lexington, Kentucky, September, 1991; Bergen County, New Jersey, January, 1992; Dayton, Ohio, February, 1993

"Medical Staff Bylaws," Seminar Lectures, Scottsdale, Arizona, September, 1990; Los Angeles, California, August, 1988

Medical Law Writer, *Private Practice Magazine*

Editorial Board and Writer, 1987-present, *Medical Office Management Magazine*

I have given lectures on national health policy before various state medical societies and hospital medical staffs in virtually every State in the Union.

Government Positions Held:

Trial Commissioner, Fayette Circuit Court, Kentucky, 1985-1988, and August, 1993 to present

Commissioner, Kentucky Registry of Election Finance (3 terms) 1981 to present; Interim Chairman, 1987

Chairman, Governor's Perryville Battlefield Commission, 1993 and present (appointed by Gov. Brerton Jones)

Chairman, Gettysburg National Military Park Advisory Commission, 1991 to present (appointed by Secretary of Interior Manual Lujan)

Character of Law Practice:

Throughout my career in the practice of law, I have been a trial and appellate lawyer. Principally, my cases have involved the adjudication of constitutional issues arising out of the regulation of the health care industry and the administration of the

Medicare and Medicaid programs, as well as antitrust issues within the health care industry.

Exemplary of the type of litigation in which I have been involved as both trial and appellate counsel and representing *amici* are the following reported cases:

McGuffey, etc., et al. v. Hall, et al., Ky. 557 S.W.2d 401 (1977). Constitutional challenge to Kentucky Medical Malpractice Act of 1976.

Renforth v. Fayette Memorial Hospital, Ind. App., 383 N.E.2d 368 (1978). Constitutional challenge to hospital requirement that medical staff members purchase minimum amounts of medical liability insurance.

Frederick v. University of Kentucky Medical Center, Ky. App., 596 S.W.2d 30 (1979). First impression challenge to state hospital invoking the doctrine of sovereign immunity after the enactment of the Kentucky Medical Malpractice Act and the University of Kentucky Medical Center Malpractice Act.

Adkins, etc. v. Sarah Bush Lincoln Health Center, 129 Ill.2d 497, 136 Ill. Dec. 47, 544 N.E.2d 733 (Ill., 1989). First impression case involving whether the Illinois antitrust laws apply to medical staff credentialing decisions; whether the Illinois Peer Review Act creates a cause of action for willful violation of hospital bylaws; and, whether hospital bylaws were breached thereby necessitating injunctive relief under the exception to the rule of non-review in Illinois.

Whitney, et al. v. Heckler, 603 F.Supp. 821 (N.D. Ga., 1985) and *Whitney v. Heckler*, 780 F.2d 963 (11th Cir., 1986), *cert. den.* 107 S.Ct. 64 (1986). Constitutional challenge to the physician fee freeze in the Medicare Amendments to the Deficit Reduction Act of 1984.

A.A.P.S., et al. v. Bowen, et al., 909 F.2d 161 (6th Cir., 1990). Challenge to the requirement of the U.S. Department of Health and Human Services and its Medicare intermediaries that all clinical diagnostic laboratory services performed for Medicare beneficiaries be billed only on an assigned basis.

Coy v. Florida Birth-Related Neurological Injury Compensation Association, 595 So.2d 943 (1992). Challenge to the constitutionality of the Florida Birth-Related Neurological Injury Compensation Act of 1988.

Caine v. Hardy, 943 F.2d 1406 (5th Cir., *en banc*, 1991), *cert. den.*, 112 S.Ct. 1474 (1992). First impression civil rights case challenging whether the State of Mississippi, by enacting a statute allowing an aggrieved physician to proceed to a state chancery court after his or her hospital medical staff privileges have been revoked, may, constitutionally, deny a physician the right to file a civil rights action

in a federal forum against a public hospital within the recognized one-year period of limitations.

Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119, 72 L.Ed.2d 647, 102 S.Ct. 3002 (1982). Whether claims peer review in the chiropractic field is the "business of insurance" for purposes of the McCarran-Ferguson Exemption to the Sherman Antitrust Act. (*amicus curiae*, Supreme Court of United States)

Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2, 80 L.Ed.2d 2, 104 S.Ct. 1551 (1984). Whether an exclusive contract for anesthesiology in a hospital is a *per se* violation of the Sherman Antitrust Act. (*amicus curiae*, Supreme Court of United States)

Patrick v. Burgett, ____ U.S. ____, ____ L.Ed.2d ____, 108 S.Ct. 1658 (1988). Whether peer review in a hospital is exempt from the Sherman Antitrust Act under the "State Action" doctrine established in *Parker v. Brown* (*amicus curiae*, Supreme Court of United States)

People of the State of New York v. Roth, et al, 419 N.Y.S.2d 851 (Nassau County Court, 1979) (*amicus curiae*). Defense of criminal antitrust case which involved the first impression legal question of whether the New York State antitrust laws (Donnelley Act) apply to the medical profession.

Cruzan v. Director, Missouri Dept. of Health, ____ U.S. ____, L.Ed.2d ____, 110 S.Ct. 2841 (1990). (*amicus curiae* for a number of physician organizations and for Surgeon General C. Everett Koop). Whether the state, upon application of the guardians, may constitutionally withdraw nourishment from a patient in a "persistent vegetative state".

Stewart v. Sullivan, (D.C.N.J., 1993) (unreported) case in the District of New Jersey (Newark) challenging whether the U.S. Department of Health & Human Services and the Health Care Financing Administration can prevent Medicare beneficiaries and their physicians from privately contracting for health care services and not file any claims for payment with Medicare.

A.A.P.S. et al. v. Clinton, etc., et al., 813 F. Supp. 82 (D.C.D.C., 1993) reversed and remanded 997 F.2d 898 (D.C. Cir., 1993). Challenge under the Federal Advisory Committee to whether the President's Task Force on National Health Care Reform is a FACA Committee, raising the first-impression issue of whether the First Lady is a "full-time officer or employee of the Federal Government."

Georgia Ophthalmic Network v. Sullivan, (N.D. Ga., 1991) (unpublished) Challenge to the attempt on the part of the Georgia Medicare Carrier to recoup Medicare payments made to all Georgia ophthalmologists after Medicare had incorrectly set the rates for such services.

Yeoman v. Commonwealth of Kentucky, (Franklin Circuit Court, pending) Constitutional challenge to the two percent (2%) provider tax instituted for purposes of Medicaid Funding and a challenge to the creation of the Kentucky Health Care Data Commission.

Other Non-health Related Cases:

Barton v. Bergland, 444 F.Supp. 447, aff'd 579 F.2d 1009 (6th Cir., 1978). Constitutional challenge to the Tobacco Inspection Act of 1935 and its enforcement prohibiting the grading of burley tobacco not tied in "hands."

Libertarian Party of Kentucky v. Ehrler, 776 F.Supp. 1200 (E.D., Ky., 1991) Constitutional challenge to Kentucky elections laws which inhibited ballot access for independent candidates for Governor and other constitutional offices.

Taub v. Commonwealth of Kentucky, 842 F.2d 912 (6th Cir., 1988), cert. den., 109 S.Ct., 178 (1989). Constitutional challenge to Kentucky bonding statute designed to encourage Toyota Motor Corporation to establish its auto-manufacturing facilities in Kentucky.

I have practiced before State Medical Licensure Boards; Judicial Councils and Claims Committees of State Medical Associations; Utilization and Quality Control Peer Review Organizations (PROs) and Certificate of Need and Licensure Boards in such states as Kentucky, Indiana, Illinois, Tennessee, Florida, New York, Texas, and Georgia. I have also appeared before the Office of the Inspector General, Medicare, and the Secretary of Health & Human Services, Baltimore, Maryland.

In a related field, I have testified before the Judiciary Committee of the United States House of Representatives on the Health Care Quality Improvement Act of 1986 and the Act to Repeal the McCarran-Ferguson Exemption from the Federal Sherman Antitrust Act. In addition, I have testified before the Ways & Means Committee of the United States House of Representatives on the Federal Alternative Medical Malpractice Insurance Act, and, I have prepared testimony before the Judiciary Committee, United States Senate, and the Health Subcommittee, United States Senate.

In addition, I have also counseled physicians, hospitals, nursing homes, and other health care providers in complying with Federal and State laws and regulations, the establishment Preferred Provider Organizations and IPA's and HMO's. As well, my practice has involved the drafting of a wide multitude of medical staff bylaws, rules and regulations for hospitals in at least fifteen (15) different states.

Representative Clients:

- * Association of American Physicians & Surgeons, Inc., Tucson, Arizona
- * American Health Legal Foundation, Inc., Tucson, Arizona
- * American Society of Dermatology, Atlanta, Georgia

- * Ohio Physicians' Foundation, Lima, Ohio
- * American College of Hyperbaric Medicine, Ft. Lauderdale, Florida
- * Adventist Health Systems/Sunbelt Health Care, Inc., Orlando, Florida
- * Hospital Corporation of America, Nashville, Tennessee
- * Pinnacle Care Nursing Homes, Nashville, Tennessee
- * Georgia Ophthalmic Network, Inc., Atlanta, Georgia

Mr. SYNAR. Dr. Sauers, see if you can limit yourself to 5 minutes and highlight what Mr. Brown and Mr. Frassanito did not do.

**STATEMENT OF RICHARD A. SAUERS, M.A., Ph.D, HISTORIAN
AND AUTHOR**

Dr. SAUERS. OK. Well, what I will attempt to do in a few minutes is summarize what they have already said and add some more information; but by way of background, I graduated from Susquehanna University in 1976 and received both my M.A. and Ph.D. in American history from Penn State University, where I studied under the eminent Civil War historian, Dr. Warren W. Hassler, Jr. I have written four books on the Civil War, two on Gettysburg thus far, and have four additional books at different publishers in different processes right now. And I have studied Gettysburg most of my adult life.

But I would agree with what my two colleagues have said thus far about the fighting at the railroad cut. What I will add is what happened to the cut afterwards.

After Union First Corps had retreated from the area, the cut was not occupied by the Confederates greatly until after the repulse of Pickett's Charge on July 3. When Lee began retreating his Army on July 4, Pender's division, which was positioned in and east of Gettysburg, withdrew to a line south along Seminary Ridge and straddling the railroad cut; and in the Confederate battle reports, they mention throwing up entrenchments on both sides of the cut to help protect themselves in case Meade's troops assaulted.

Also on July 4 two guns of Hupp's Virginia Battery were sent north of the cut and put into position to help defend against a possible Union attack.

And so this area was occupied by the Confederates then, on July 4 into the early morning hours of July 5, when Lee began moving his troops from Gettysburg to retreat southward toward Virginia.

Then, as Mr. Frassanito said, the area becomes kind of a backwater as monuments go up in the 1880's, because it was up to the Union veterans where they wished to place their monuments; and as with most soldiers in both armies, they wanted to place their monuments at the point of farthest contact with Confederate troops, so—as you saw in the Bachelder map slide. A lot of the original fighting at Gettysburg took place further west, and so when the monuments went up in the 1880's, most of the veterans—regimental veteran committees wished to place their monuments further west to show that they had actually been fighting further forward before they retreated, and so the area along Seminary Ridge, which includes the fierce fighting on the grounds of the Lutheran Theological Seminary, is basically empty of monuments.

The Federal Government took over the park in the late 1890's, and at that time, Stewart's battery position was marked by the tablet and the guns along the Chambersburg Pike simply because the land north of the cut had not been bought by the park yet.

Col. John P. Nicholson, who was one of the three commissioners appointed by the war department to oversee the battlefield, remarked when the land was finally purchased in December 1909 that they had tried to buy the area north of the cut several times but the price had just been too high.

But finally in October 1909, there were some deaths and a partnership apparently had dissolved and the land—7½ acres of land north of the cut was for sale, and Nicholson recommended that it be purchased because it included sections of historic fighting. It was still wooded as it was at the time of the battle, and it included Confederate earthworks that had been thrown up by Pender's division.

With those recommendations Nicholson made to the war department, the war department purchased this land in 1909 and then added it to the park since then. And I will agree with my colleagues that this area of the battlefield is not the most important but it is one of the important sections of the park because men fought and died here trying to fight for what they believed in; and it is hallowed ground because of bloodshed there. And as General Scales said to Colonel Dawes after the war, he had never witnessed such destructive fire from the two sections of Stewart's battery which basically destroyed his brigade as it moved toward the seminary building.

Thank you.

Mr. SYNAR. Thank you, Dr. Sauers.

[The prepared statement of Dr. Sauers follows:]

Written Statement of Dr. Richard A. Sauers
Regarding the Railroad Cut at Gettysburg, PA

My name is Dr. Richard A. Sauers. I have been a student of the Battle of Gettysburg for most of my adult life. I received a B.A. in American History from Susquehanna University in 1976 and both my M.A. (1983) and Ph.D. (1987) from The Pennsylvania State University, where I studied under Dr. Warren W. Hassler, Jr. To date, four of my books have been published (The Gettysburg Campaign bibliography, A Caspian Sea of Ink: The Meade-Sickles Controversy, and the two-volume Advance the Colors! Pennsylvania Civil War Battleflags). I have four additional books in various stages of completion. I have also written several journal articles, newspaper articles, introductions to reprints, book reviews, and other publications about the American Civil War. My special interest is Gettysburg, and I feel I am well qualified to speak about the significance of the action around the railroad cut in question.

Gettysburg in 1863 was serviced by a single railroad that entered town from the east. Plans were underway to extend the road to the west, but by the time of the battle, tracks had not yet been laid. The roadbed itself was generally complete and cuts had been made through the ridges west of Gettysburg, notably through Seminary and McPherson's ridges. The cut through Seminary Ridge was deep and presented both an obstacle and defensive position for any military actions.

When the infantry battle opened on July 1, 1863, three regiments of Brigadier General Lysander Cutler's Second Brigade,

First Division, First Army Corps, Army of the Potomac, deployed north of the cut to oppose advancing Confederate infantry. This Union line was flanked and two of these regiments--56th Pennsylvania and 76th New York, retreated into the wooded terrain north of the cut on Seminary Ridge to reform. They were later joined by the 147th New York after that regiment managed to extricate itself from close fighting with the enemy.

Meanwhile, heavy battle action at the cut through McPherson's Ridge occurred. At its conclusion, the 6th Wisconsin of the First (Iron) Brigade, First Division, withdrew into these woods to reform. Its commander, Lieutenant Colonel Rufus R. Dawes, later wrote that his unit spent half an hour performing this task. When finished, both the 6th Wisconsin and Cutler's three regiments advanced into open terrain to the west.

This section of Seminary Ridge was next occupied by three smoothbore Napoleon cannon of Battery B, 4th United States, commanded by Lieutenant James Stewart. This battery took position later in the afternoon, before the final Confederate advance that pushed the First Corps off Seminary Ridge and through the town to the heights beyond. Stewart placed Lieutenant James Davison and three of his six guns south of the cut on the Chambersburg Pike, then unlimbered his other three cannon under cover of the woods north of the cut. Stewart wrote that the section under his immediate command was perhaps three hundred yards in advance of Davison's guns.

When the Southern infantry began a general advance after 4:00

p.m., the Union First Corps infantry began to retreat to Seminary Ridge for a final stand. When the 6th Wisconsin fell back, Dawes had his men move into the railroad cut in McPherson's Ridge for cover, then run back through the cut to Seminary Ridge. Here, Dawes reformed his troops and led them up over the cut into the woods on its northern side. His regiment was placed in support of Stewart's three guns.

The Union cannon helped break up a massed attack by Major General Henry Heth's Division of Lieutenant General Ambrose P. Hill's Third Corps, Army of Northern Virginia. Heth's men had opened the battle that morning, had suffered sizeable casualties, and were exhausted. Therefore, Hill sent three brigades of Major General William D. Pender's Division to relieve Heth's men.

Pender's battleline, advancing south of the Chambersburg Pike, made an impressive target for the defending Union infantry and artillery. Brigadier General Alfred M. Scales's North Carolinians formed Pender's left. As they advanced, Stewart wheeled his guns to face south and opened a heavy enfilading fire on the advancing gray lines. Scales later reported:

"Here the brigade encountered a most terrific fire of grape and shell on our flank, and grape and musketry in our front. Every discharge made sad havoc in our line, but we still pressed on at a double-quick until we reached the bottom, a distance of about 75 yards from the ridge we had just crossed, and about the same distance from the college, in our front. . . . Our line had been broken up, and now only a squad here and there marked the place

where regiments had rested."

In 1882, Scales remarked to Dawes at a reunion on the field that "the fire of your battery planted there was terribly destructive to my men." However, Pender's next brigade, that of Colonel Abner Perrin, continued to advance and pierced the Union line at the seminary building. This, plus continued pressure from the north and the rout of the Union Eleventh Army Corps north of town, forced the First Corps to retreat from Seminary Ridge.

Brigadier General John C. Robinson's Second Division of the First Corps had continued the Union line north of Stewart's position. The battery remained in position to fend off a frontal attack by Junius Daniel's Brigade of Robert Rodes's Division to help buy time for Robinson's survivors to fall back. Dawes received an order from First Division commander James Wadsworth to retreat, leaving Stewart unsupported. However, Brigadier General Henry Baxter's brigade (12th Massachusetts, 83rd, 97th New York, 11th, 88th, 90th Pennsylvania) of Robinson's division halted in the woods around Stewart's guns and helped protect the battery.

Baxter's men remained in support until Robinson observed that the enemy was overlapping his flanks. He then ordered his men to fall back. Colonel Richard Coulter of the 11th Pennsylvania reported that his men retired along the railroad, "suffering most severely from a galling fire of musketry and artillery." Scores of Yankees were taken prisoner as the blue line disintegrated under the enemy pressure. Stewart, abandoned by his infantry supports, finally received an order to withdraw and with extreme difficulty

managed to get his battery to safety.

After the heavy fighting in the area on July 1, the railroad cut did not figure in the remainder of the battle on July 2 and 3. Sometime after midnight on July 4, General Rodes's Division was withdrawn from its position in and east of Gettysburg and occupied a defensive position along Seminary Ridge on both sides of the railroad cut. Daniel's Brigade appears to have formed line in the woods north of the cut. Two Napoleon smoothbores from the Salem (Virginia) Artillery, Lieutenant Charles B. Griffin commanding, were placed in position to support Rodes's troops. The Southern infantry threw up earthworks to make their position stronger. Captain J. A. Hopkins of the 45th North Carolina reported that on July 4 his regiment "built small fortifications."

Rodes's troops began to retreat from the battlefield early on July 5. Once the armies left the field, the wooded section of Seminary Ridge north of the railroad cut was largely forgotten by history. When Union regiments began erecting monuments on the battlefield in the 1880s, Seminary Ridge was sparsely marked because the veterans preferred to place their monuments at the points of farthest advance. Thus, only the position of the Salem Artillery on July 3 was marked, and this only after the federal government took over the field. Stewart's battery marker was placed south of the cut along the Chambersburg Pike.

Because veterans did not purchase any tracts north of the cut to erect their monuments, the ground remained in private hands until late 1909. On October 13, 1909, John P. Nicholson, chairman

of the Gettysburg National Park Commission, notified the secretary of war that 13.75 acres of land, including the section north of the cut, had been offered for sale. Nicholson wrote that the commission had tried to buy this tract on several occasions, but declined to purchase it because of its high price. Now, Nicholson continued, the price had dropped to half its former offer. "As it is woodland and contains one of the lines of the Confederate earth-works and Lunettes of Confederate batteries. which is extremely desirable to preserve from the ravages of a brick yard, its purchase is recommended at the price offered." On December 6, the deed for the sale was recorded in the Adams County Court House.

A handwritten signature in cursive script, reading "Richard A. Sauers". The signature is written in dark ink and is positioned above a horizontal line.

Dr. Richard A. Sauers
May 3, 1994

Mr. SYNAR. At this time, I would like to enter into the record some additional statements of Dr. Warren Hassler, Jr., Professor Emeritus of History from Penn State University and a statement from Dr. Harry Pfanz, former Chief historian of Gettysburg National Military Park. These statements concern the historical significance of the area known as Seminary or Oak Ridge that was destroyed by this excavation in 1991.

[The information can be found in the appendix.]

Mr. SYNAR. Gentlemen, your testimony mentioned that the railroad cut at Oak Ridge was the last Union position held on that portion of the battlefield on July 1, 1863, and that more Union troops were captured in that cut than were captured at any other time during the battle.

There are some historians that dispute the significance of this railroad cut. For example, there are letters attached to the college's testimony which we will hear later from professors of history at Harvard and Boston University which suggest that this particular piece of land has little or no historical significance.

How do you respond to that, Dr. Sauers?

Dr. SAUERS. As a bibliographer of Gettysburg, as a person who has studied the battle and collected information on the battle and published a bibliography on the battle, I would say they have been misled, depending on what you read.

Some of the earliest statements that come out of Gettysburg mentioned the heavy fighting at the cut. For example, Samuel P. Bates' History of Pennsylvania Volunteers—the first volume was published in 1867—and in his regimental history of the 11th Pennsylvania, which is one of Robinson's regiments that stopped and helped support Stewart's battery until it could get away, Bates devoted at least one or two paragraphs describing the tough fighting that the regiment had here because it was a desperate position.

If the Confederates had managed to break through the railroad cut, most of Robinson's division probably would have been captured; and it was an extremely important tactical position for the Union troops to hold.

Mr. SYNAR. Mr. Brown, with respect to that same question, the college—and I want to get this nailed down—the college and some of the park service have persisted in stating this famous Seminary Ridge railroad cut is about 1,000 feet to the west of the land that is in question here today.

Now your point is that the location of the regimental markers and the layout of the automobile tour route has influenced the subsequent historical interpretation more than the reality of the situation; is that right?

Mr. BROWN. Well, yes. Obviously, there are three cuts. One through McPherson Ridge, one through the Ripple, and then one through the Seminary Ridge/Oak Ridge. Indeed, the cut through the Ripple is a cut of great historic importance. It is the site of the 6th Wisconsin and the 14th Brooklyn and all that.

But in terms of this railroad cut, one cannot say that the fighting anywhere else on that field was any more intense or dramatic than occurred here. It was to this site—and one merely needs to look at the cut as a military man and say that has to have some significance here, because of the configuration.

But what happened here was that it became the central point on which the Federal lines collapsed; hence the fighting became horrific here, hence the comments from General Scales about Stewart's battery, hence the episode of the 16th Maine, which was one of the most dramatic episodes of the battle.

So for purposes of our Harvard and Boston professors, I am glad I don't know their names, but they are clearly misguided and clearly don't understand, to me, what are the facts regarding this battle.

Mr. SYNAR. Mr. Frassanito, what we have here is that this persistence by the park service of the limited significance of this ridge has been dictated more by the automobile tour. Is this the same in other places in the park?

Mr. FRASSANITO. I want to backtrack here. Those comments that were made in the letters written by the professors of Harvard and Boston University are the stupidest comments I have ever heard. History is based on evidence; it is not people flinging out conclusions. If anyone wants to establish that the cut is significant, you have to come up with documentation to show what happened there. If you want to establish that it is not significant, you are going to have to come up with an absence of documentation. And we have the documentation.

I also want to emphasize that no historian designated that site for deletion. That site was designated by the college, and to my knowledge, no—the college would love for people to believe that there was some kind of a panel of historians that got together during the planning stage and agonized over this Solomon's choice: Do we give up that cut and let the college destroy it to save this other site?

Nothing like that ever happened. The historians did not know the fate of that cut until the bulldozers arrived, so I would like to know who these people are, what their evidence is, and what their motivations are for making such stupid comments.

Mr. SYNAR. Let me go back to my question. And I know that testimony will be made part of the record and you can have a nice correspondence with those professors.

I am more interested in how the park, and it appears the college, have taken the opportunity of the automobile tour and where cars are allowed to go as more of a determining factor of where the battle—

Mr. FRASSANITO. I would like to comment on that. That is also an inane comment. History is not determined by how accessible the site is.

Several years ago, the park service had a project, they had a concept of getting rid of the road through Devil's Den. Had they enacted that project and the tourists didn't have access to Devil's Den, does that all of a sudden make Devil's Den nonsignificant and you can do anything you want to it?

One of the ironies of this is because the road was put westward from this site in 1886 and the construction and the monuments all wound up out there, the Seminary Ridge railroad cut that was left in a backwater area undisturbed, turns out to be a virtually intact, pristine site that still maintains its Civil War appearance without the intrusion of roads, monuments, buses, fumes, et cetera. It is one of the few significant sites on the battlefield that you could go

to and in some sense of serenity actually see what it was like in 1863.

Mr. SYNAR. Mr. Frassanito, if the college had wanted to find this out, they could have found this out through a variety of sources. And more importantly, is there any new significant evidence that would change the historical perspective you have just outlined, anything that has happened in the last 10 years that would lead us to believe we have been wrong for all these years?

Mr. FRASSANITO. Well, no, the history—first of all, I get back to my statement. The history of that cut has been known since the battle. It is just that because tourists don't have access, it is not interpreted by the park service, but historians know about the cut.

I want to say, as far as ease of finding out, had anybody made a phone call to the senior historian of the Gettysburg National Military Park and said something as simple as, hey, Kathy, would it be OK to remove the northeastern quadrant of the Seminary Ridge railroad cut, she probably would have had a heart attack, and I want to know why she didn't know about that. But the information is so simple I could get a fifth grader to find it in a half hour.

Mr. SYNAR. We will have her statement later this afternoon.

Mr. Brown, let me ask you this: What resource has been lost as a result of the construction, of the ridge being destroyed and the construction of the western spur and maintenance building? What has been lost here? What resource has been lost?

Mr. BROWN. Well, I think Bill Frassanito hit it well. I mean, this was a pristine area until this occurred. It looked today—as it did during the battle. And as we have stated before, it represents and represented an area that was the scene of horrific fighting, a point on which the First Corps lines collapsed, a place where, again, any military observers or anyone interested in land and terrain would know this would be an important feature of any land battle. And up until this was destroyed, we had this intact and pristine.

And, again, because it is not accessible on a driving tour does not make it any less historic. In fact, most of the points of most historic significance at Gettysburg you have to walk to; and this was one of them. And it grieves me personally, when you think of the actions of the 16th Maine, the actions of Stewart's battery, of Cutler's Brigade, of the 6th Wisconsin, to see that that entire site that they defended so well now gone.

Mr. SYNAR. Dr. Sauers, you said in your testimony that portions of Oak Ridge became part of the military park in 1909. You also state that the purchase was made to preserve the Confederate earthworks and battery positions on the ridge. Did the war department at that time have to threaten condemnation of that property?

Dr. SAUERS. No, they did not. As I have mentioned, Colonel Nicholson said in his letter from October of—from December 1909 that they had tried several times to buy that section of the battlefield because there were some earthworks still existing on the park on that section and they—the price was something like \$500 an acre, which was exorbitant at that time when they offered to buy. They waited until some people passed away and the price came down, and they jumped on it and bought it.

But, no, they did not have to threaten to condemn.

Mr. SYNAR. Now, Mr. Brown, given your knowledge of the historical significance of this particular piece of land, were you all surprised when the park service had given the land away and allowed a pretty good chunk of this ridge to be cut off? Were you all pretty shocked by that?

Mr. BROWN. Yes.

Mr. SYNAR. OK.

Mr. FRASSANITO. I was not only shocked, I was devastated because I have been familiar with that cut since I was a 17-year-old freshman in Gettysburg College.

Mr. SYNAR. Were you surprised at what the college did?

Mr. FRASSANITO. I was shocked. Well, to tell you the truth, I was more shocked by the park service allowing it to happen, because we have been having problems with the college for several years. In fact, this was becoming typical of the college's development schemes, but I was most shocked and felt actually betrayed by Kathy Harrison because I presumed that she knew what she was doing; and it wasn't until later that I—well, she is going to tell you all about that.

But I was shocked at the park service more than anything else. I felt betrayed.

Mr. SYNAR. Let me ask all three of you something very briefly. Do you think the park service should undertake efforts to get the land back and reconstruct the ridge?

Mr. BROWN. Yes.

Dr. SAUERS. Yes.

Mr. FRASSANITO. Yes, definitely.

Mr. SYNAR. Gentlemen, thank you. Your testimony has been very insightful and very helpful, and your assistance today really sets the tone for the hearing I think we want to have today, so I thank all three of you.

Mr. SYNAR. Our next panel is Dr. Walt Powell, grants manager and historic preservation officer of the Borough of Gettysburg, and executive director of the Gettysburg Battlefield Preservation Association; Ms. Brenda Barrett, director of the Bureau for Historic Preservation, and Dr. Kurt Carr, chief of the division of archaeology and protection, the Pennsylvania Historical and Museum Commission.

If you three would please come forward. Do any of you have objection to being sworn? Please stand and raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Welcome. And Dr. Powell, why don't we start with you, and again your testimony will be made part of the record. We would ask you all to summarize within about 5 minutes, if you could.

STATEMENT OF WALTER L. POWELL, GRANTS MANAGER/HISTORIC PRESERVATION OFFICER, BOROUGH OF GETTYSBURG AND EXECUTIVE DIRECTOR, GETTYSBURG BATTLEFIELD PRESERVATION ASSOCIATION

Dr. POWELL. Thank you, Mr. Chairman, members and the subcommittee in absentia. It is a pleasure and an honor for me to be here on behalf of the board of directors of the Gettysburg Battlefield Preservation Association, a group which I have served as exec-

utive director in a volunteer capacity since 1984. A bit about my background: I have my graduate degree in history and in American literature from Kent State University and have since published a book on Gettysburg, known as "Connecticut Yankees at Gettysburg," published by Kent State University Press in 1993.

I also served formerly as the president of the Association of Licensed Battlefield Guides of the Gettysburg National Military Park and was a licensed guide from 1975 until 1986. I am pleased to see members of the guide association represented in the audience this afternoon.

I feel particularly well acquainted with the details of this matter that has come before this committee, for our board of directors worked cooperatively since 1986 with the National Park Service, with Congressman Goodling, and former Congressman Kostmayer in working on the legislation that led to the establishment of the Gettysburg Boundary bill in 1990.

And, indeed, as Congressman Goodling has noted, in October 1989, I did testify before the National Parks and Recreation Committee in support of the proposed legislation and had no objections at that time.

I say this to underscore the fact that I was horrified with what I saw developing early in 1991 and the subsequent degradation of almost 4 acres of the 7.5 acre Seminary Ridge/Oak Ridge site, because it was my understanding—and I had no reason to believe otherwise—that the proposal to transfer property between the park and the college involved only a transfer of land that would involve a minor relocation of railroad tracks, no degradation of the ridge itself, and in the abstract, it seemed like a reasonable proposal.

And I underscore "in the abstract," because indeed even as late as February 1989, Mr. William P. Van Arsdale, former treasurer of the college, appeared before the borough planning commission of the Borough of Gettysburg and, as a "courtesy to the Commission," presented a brief outline of the proposal, again underscoring the fact that nothing would be done to degrade the ridge, that this would be a simple relocation of tracks; and it seemed again like a very reasonable proposal.

I have been deeply pained to read the use of the boundary study statement from 1988 and references to the boundary study hearings of 1988 as evidence that the public had ample opportunity to have involvement and input in the specific details of this trade. Because again, as I can remind those of you who have looked at this all too well, the 1988 boundary study simply stated that this would require minor park boundary alterations and that indeed the change would, "not have an adverse impact on known historic resources."

I was naive enough to believe that that would be just the case, that the park would be well on top of the situation and that there would be no adverse impact.

Indeed, when the public hearings—the last of them were held in September 1988, which I attended, I recalled that I had no objection to the particulars of trade and even was interviewed by WGAL-TV in Lancaster urging passage of the legislation. I had heard Mr. George Shealer, who was a battlefield guide and still is a battlefield guide, query Jonathan Doherty of the National Park

Service asking him specifically about the trade itself, and was assured at that time that there were no degradations of the ridge involved.

In summary, I can say that at no time from the boundary study public hearings of 1988 until the passage of the legislation in August 1990 was the public ever informed of the specifics of these details.

And I emphasize "specifics of these details" because again, in the abstract, there seemed to be no problem; as it has been pointed out in earlier testimony, had the specifics of these details been outlined, I would have no reason to be here today if that had never occurred. It is troubling for me and it was troubling to watch both Gettysburg College and the National Park Service continue to proclaim that all proper procedures were followed in this transaction or for the National Park Service to use an archaeological survey commissioned by the college, apparently from specifics outlined by the park, to determine that the land had no National Register significance.

With no fault being laid at the hand of the archaeological contractor, it strikes me that to use an archaeological report to, in effect, counteract the importance of National Register land already deemed significant was irrelevant and deeply troubling; that the section 106 process, at least as I understand it, had been perverted and used deliberately in such a way as to appear that all proper procedures had been followed.

It is my sincere hope that this committee will conclude what we have been desperately trying to get to the public's attention for the past 3½ years: That the public trust was seriously abused, that a precious historic resource has been destroyed by incompetent or deliberate National Park Service action. We hope then that you will find the means to do more than just ask that operational procedures be corrected, but that every effort be made to restore the Seminary/Oak Ridge railroad cut and return it to the American people.

I can express my dismay no better than Gettysburg veteran Gen. Daniel Sickles who introduced the legislation, as many of you know, that led to the establishment of Gettysburg National Park in 1895, almost a century ago, when he was faced with another great "terrain robbery," as we like to call it, in the 1890's; what goes around comes around. When he learned of the proposed Gettysburg electric trolley which was already proposing to seriously degrade important portions of the battle lines, Sickles and many of the veterans were horrified that private development interests would take precedence over the interests of the veterans and the American public. And he said as follows:

I must say, therefore, that when the other day I went there with my associates and met there with some of the generals who commanded upon the other side, and found that this spoilation had begun, I felt exactly as I would have felt in the army while going on the grand rounds had I discovered a sentinel asleep. I should have ordered that man shot; all I could do in this case was to raise my voice in indignant protest.

I want to thank this committee for its investigation of this matter and, on behalf of our association and I believe of the American

public, urge that you do everything you can to remedy what has happened.

Thank you, Mr. Chairman.

Mr. SYNAR. Thank you, Dr. Powell.

[The prepared statement of Dr. Powell follows:]

TESTIMONY OF DR. WALTER L. POWELL, EXECUTIVE DIRECTOR
GETTYSBURG BATTLEFIELD PRESERVATION ASSOCIATION

FOR

SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL
RESOURCES

MAY 9, 1994

Mr. Chairman and Members of the Subcommittee:

On behalf of our Board of Directors I am grateful for the opportunity to speak to you today on the matter of the Seminary Ridge land exchange between Gettysburg National Military Park and Gettysburg College in August 1990--a transfer which, in my view, led to one of the greatest environmental disasters in the history of Gettysburg National Military Park. I am particularly well acquainted with this matter as I have served as Executive Director of the Gettysburg Battlefield Preservation Association since 1984, and with our Board of Directors worked closely with the National Park Service, former Congressman Peter Kostmayer and Congressman William F. Goodling in promoting passage of Public Law 101-377 (the GNMP Boundary Act). On October 26, 1989 I testified on behalf of our organization before the House Subcommittee on National Parks and Recreation to support the Gettysburg Boundary Bill, and attended several of the public hearings in Gettysburg between March and September 1988 that preceded the legislation. I and other members of our Board followed all of the proceedings very closely, and while we had some reservations about how effective the new boundary would be in protecting all threatened battlefield resources, we believed on the whole that it was a good piece of legislation.

I say this to underscore my sense of horror when bulldozers began uprooting trees and moving earth on New Years Day 1991, or the mass degradation of a substantial portion of the Seminary Ridge "Railroad Cut" that followed during the next two months. I was all the more astonished when I began to ask questions in mid-January 1991 of several people, including Gettysburg National Park Superintendent Jose Cisneros and NPS Mid-Atlantic Regional Director James Coleman about how this could happen, only to be advised that everything was done according to the requirements of Section 106 of the National Historic Preservation Act, and that the public had been fully informed. I could not believe what I was hearing, for at no time in all the public deliberations that I attended was the issue of bulldozing a substantial portion of Seminary Ridge for a railroad spur line ever discussed. Both I and my colleagues on the GBPA Board were aware that the Boundary Study, Gettysburg National Military Park: Draft Report to Congress, August 1988 noted a "possible re-routing of 3,600 feet of the Gettysburg Railroad line from its current location on the Gettysburg College campus to one along the park/college boundary," but assumed that the statement "would require minor park boundary alterations" meant just that, and that the change would indeed "not have an adverse impact on known historic resources"(p.36). In concept I could find no problem with simply relocating the tracks, and at the September 14th, 1988 public hearing at Gettysburg Junior High School Cafeteria I heard Jonathan Doherty, a Regional Planner for the NPS, assure Gettysburg resident George Shealer that the tracks would only be moved "to the base of the ridge," and that there would be no damage to Seminary Ridge itself. I remember distinctly having no reason to be concerned about this issue, and, as I recall, when I made brief commentary for WGAL-TV (Channel 8, Lancaster, Pennsylvania) that evening my comments for a record concerned the importance of moving the legislation forward.

At no time from the last public hearing in September 1988 until the passage of the Boundary Bill in August 1990 was the public ever informed about the true nature of the proposed land exchange at Seminary Ridge. Indeed, while attending a meeting of the Gettysburg Borough Planning Commission on February 20, 1989, I heard Mr. William VanArsdale, then Treasurer of Gettysburg College, go over the concept of the track relocation and assure those present that the tracks would be placed at the base of the ridge, with little damage to Seminary Ridge. I can also state that to the best of my knowledge no Gettysburg Borough Officials were ever advised of the true scope of this work.

In light of these facts, it has been deeply troubling for me to have to watch both Gettysburg College and Gettysburg National Park continue to proclaim that all proper procedures were followed in this transaction, or for the NPS to use an archaeological survey done by a contractor hired by Gettysburg College to justify claims that the land bulldozed was not important. I was particularly struck by the irony of this fact, for in normal circumstances archaeology is used to complement the historic record or provide information where the historic record is incomplete--not to be used as justification for destroying land already on the National Register!

It is my hope that this Committee will conclude what we have known for the past three-and-a-half years--that the public trust was seriously abused, and that a precious historic resource has been destroyed by incompetent or deliberate National Park Service action. We hope that you will then find the means to do more than just ask that "operational procedures" be corrected, but that every effort be made to restore the Seminary Ridge Railroad Cut and return it to Gettysburg National Park. I can express my dismay no better than Gettysburg veteran General Daniel Sickles did in May of 1893 when faced with the prospect of another "terrain" desecration by an electric trolley line across the Battlefield:

I must say, therefore, that when the other day I went there with my associates and met there with some of the generals who commanded upon the other side, and found that this spoilation had begun I felt exactly as I would have felt in the army while going on the grand rounds had I discovered a sentinel asleep. I should have ordered that man shot; all I could do in this case was to raise my voice in indignant protest.

Thank you for your efforts in investigating this matter; I would be glad to answer any questions you may have.

Dr. Walter S. Powell
May 4, 1994

Mr. SYNAR. Ms. Barrett.

STATEMENT OF BRENDA BARRETT, DIRECTOR, BUREAU OF HISTORIC PRESERVATION, THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION, ACCOMPANIED BY KURT CARR, CHIEF, DIVISION OF ARCHAEOLOGY AND PROTECTION

Ms. BARRETT. I am Brenda Barrett. I am the director of the Bureau for Historic Preservation for the Pennsylvania Historical and Museum Commission, which is Pennsylvania's public history agency. I serve there also as the deputy State historic preservation officer; and with me today is Dr. Kurt Carr, who serves as head of the Archaeological and Protection Program.

The Pennsylvania Historical and Museum Commission did review the boundary study for the Gettysburg National Military Park that was published and drafted in 1988 and recommended that an archaeological survey be done specifically of the park-college land exchange to identify resources that might be in that area.

We didn't hear any more about the process until June 1990 when we received a notice from the Interstate Commerce Commission, which, in compliance with their National Historic Preservation Act responsibilities, their section 106 responsibilities, requesting that we review the abandonment of the railroad track which ran through the center of Gettysburg College.

In August 1990, a member of our staff who was visiting the Gettysburg area for another project stopped by and looked at—examined where the track was going to be relocated and also took a look at the railroad buildings that were going to be demolished as part of this; and later on confirmed that there was an archaeological survey to take place, and cleared the particular ICC, Interstate Commerce Commission, project in the end of August 1990.

The Pennsylvania Historical and Museum Commission did not review the actual land exchange between the National Park Service and Gettysburg College. This was not reviewed because under a programmatic agreement that the National Park Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers had entered into in 1981, the park service was not required to bring every individual project through the section 106 process. They were not reviewed individually.

The park service was required to consult with the State historic preservation office and the advisory council when they were developing a plan, but once the plan was developed, they were expected to carry out the individual actions without any subsequent review.

I should note that that approach, that programmatic agreement, was changed at the end of 1990 for actions occurring after that date; and the most recent memorandum of agreement does require that there be an individual project review on all actions.

In conclusion, the outcome of this land exchange was not in the best interests of battlefield resources, and our letter to the National Park Service of January 31, 1991, is attached on that issue, but the park service was indeed following the process that was in effect at that time. The subsequent revisions to the programmatic agreement that require a case-by-case individual review that is now in

place, I think will hopefully prevent those kinds of things from happening in the future or at least allow them to happen—those kinds of exchanges and issues to happen more in the public eye and more—have a more complete examination of all the issues related to them.

Thank you.

Mr. SYNAR. Thank you both very much for that.

[The prepared statement of Ms. Barrett and Dr. Carr follow:]

TESTIMONY OF THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
SUBMITTED BY BRENDA BARRETT AND DR. KURT CARR
U.S. HOUSE OF REPRESENTATIVES
ENVIRONMENT, ENERGY AND NATURAL RESOURCES SUBCOMMITTEE
MAY 9, 1994

In 1987 Public Law 100-132 directed the National Park Service (hereinafter NPS) to conduct a boundary study of the Gettysburg National Military Park to resolve ongoing questions on establishing a permanent boundary for the park and protecting outlying features. The report, A Boundary Study for the Gettysburg National Military Park published in 1988, proposed a number of additions and deletions to existing park boundaries and a number of creative proposals to protect outlying monuments and the historic setting through cooperative approaches. The Pennsylvania Historical and Museum Commission (hereinafter PHMC) commented on the report in January of 1989, and stated that an archaeological survey should be undertaken to identify significant resources associated with the park/college land exchange.

In June of 1990 the PHMC received notice, pursuant to the Interstate Commerce Commission's compliance with Section 106 of the National Historic Preservation Act, that the Gettysburg Railroad was proposing to abandon a rail line located on the campus of Gettysburg College and move it to the perimeter of the campus. Following up on that notice the PHMC sent a letter requesting more information on the project including information on any demolitions or new construction, and copies of any site plans or maps of the project area. Shortly after that request (August 9, 1990), a PHMC

staff person, visiting the Gettysburg area to review the location of a housing development, also visited Gettysburg College to examine the track relocation and evaluate the existing railroad buildings proposed for demolition. Representatives of Gettysburg College and the NPS were present and discussed the issues of moving the tracks to the edge of the college campus, demolition of certain railroad buildings and future acquisition by the NPS of easements on college land. Earth moving associated with the track relocation and the potential construction of new railroad buildings were not discussed as part of this meeting. On August 15, 1990 the PHMC found that the track relocation project would have no effect on cultural resources.

Although the PHMC reviewed the track relocation project as part of the Gettysburg Railroads filing with Interstate Commerce Commission, the PHMC did not review the actual land exchange between the NPS and Gettysburg College. This was not reviewed, because at the time of the land exchange NPS undertakings and compliance under Section 106 of the National Historic Preservation Act were covered by a Programmatic Agreement between the NPS, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers. Under this agreement the State Historic Preservation Officer and the Advisory Council were notified only of the development of Park Service plans, such as the Boundary Study. Once such a plan was adopted by the NPS, the NPS was not required to go through an individual review of any specific action as long as the actions were in

fulfillment of the overall plan.

This approach to carrying out the NPS Section 106 requirements was changed by the most recent Memorandum of Agreement which went into effect at the end of 1990. Under this agreement the regional director of the NPS must conduct an individual project review on all actions unless covered by a categorical exclusion. In January of 1991, after the excavation of the area of the railroad cut, the PHMC wrote to Jim Coleman, the then Mid-Atlantic Regional Director of the NPS, stating our concern with the result of the land exchange. However, we also expressed our hope that under the new Programmatic Agreement our agencies would have the opportunity to avoid these issues in the future. (see Dr. Brent Glass's letter to Jim Coleman, January 31, 1991 attached)

In conclusion, while one of the outcomes of this land exchange, specifically the expanded railroad cut, was not in the best interest of the battlefield resources, in our opinion the NPS was in compliance with the National Historic Preservation Act and the implementing Programmatic Agreement. The subsequent revisions to the Programmatic Agreement that require closer examination of all undertakings within parks should assist all parties to make better decisions in the future.



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
 P O Box 1026, HARRISBURG PENNSYLVANIA 17108-1026

EXECUTIVE DIRECTOR

January 31, 1991

James W. Coleman, Jr.
 Regional Director
 Mid-Atlantic Region
 National Park Service
 U.S. Customs House, Second Floor
 Second and Chestnut Streets, Room 251
 Philadelphia, PA 19106

Dear Mr. Coleman *[Signature]*

The Pennsylvania Historical and Museum Commission is most concerned about the recent land exchange with Gettysburg College to provide for the relocation of the Gettysburg Railroad. This project, specifically the construction of a Y for the railroad line, has had and is continuing to have an adverse effect on historic resources associated with the Battle of Gettysburg. The expansion of the existing railroad cut to a depth of thirty (30) feet has changed, in a significant way, the topography of the battlefield and has cut through trenches and rifle pits that may have been associated with that period.

The Commission had reviewed and commented on the Park Boundary Study, which contained a reference to the project in 1989 (attached). However, we did not have further information on the scope and impact of the project.

With this experience and our new relationship under the Programmatic Agreement, our agencies should have the tools to avoid these issues in the future. I look forward to working with the Park Superintendent, Jose Cisneros, on land exchanges, boundary expansions and historic preservation projects of mutual interest. With continued cooperation, we look forward to better coordination down the road.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brent".

Brent D. Glass
 Executive Director

BDG/ss
 Attachment
 cc: Jose Cisneros
 Harry Stokes
 Advisory Council on Historic
 Preservation

Mr. SYNAR. Let me begin by getting just a general agreement that the boundary study was beneficial to the preservation of the historic battlefield. After all, it did expand the boundaries about 2,000 acre, did it not?

Ms. BARRETT. Yes, and actually we also testified in support of the boundary action.

Mr. SYNAR. Now, during the public meetings on that boundary study did Jonathan Doherty of the park service, mid-Atlantic regional office, use a larger version of the map to discuss the proposed tracts of land to be added and to be deleted from the park?

Dr. Powell.

Dr. POWELL. To my knowledge, the only map that he used was a basic outline of the entire area of proposed battlefield expansion with the specific parcel not identified strictly.

Mr. SYNAR. The natural question is, if you didn't have a real detailed map, why didn't you request a better map?

Dr. POWELL. It is a wonderful question, and again I can say, Mr. Chairman, that it was my assumption in the abstract that the proposal—I had seen the smaller parcel as outlined on the boundary map of 1988—would not pose any problems if undertaken as stated in the written portion of the record. I had no reason to believe that it would pose any significant issue.

Mr. SYNAR. All right. Now, we are going to review Mr. Doherty's public statements about the railroad relocation, but in the meantime, at the time of the boundary study, Dr. Powell, what was your impression of the public notice given by the park service?

Dr. POWELL. At the time, Mr. Chairman, honestly my impression was that the park was making every effort to reach effective landowners, to reach those that might have a specific interest in attending the hearings; and so I felt at the time they had made a genuine effort to reach out.

Mr. SYNAR. You attended all the boundary study public meetings?

Dr. POWELL. I attended three of the five meetings, yes, Mr. Chairman.

Mr. SYNAR. Did you attend the last public meeting held September 14, 1988?

Dr. POWELL. I was at that hearing.

Mr. SYNAR. Now, Dr. Powell, did you or any other members of the Gettysburg community seek more details from the park service about the proposed land exchange?

Dr. POWELL. Well, two Gettysburg residents and battlefield guides specifically raised the question. Jim Cole, who is a—still a licensed battlefield guide, and Mr. George Shealer asked Jonathan Doherty specifically about the effect, if any, that this exchange would have on the ridge.

Mr. SYNAR. And what was Jonathan Doherty's response?

Dr. POWELL. His response was, it was at the base of the ridge, essentially, to paraphrase.

Mr. SYNAR. At this time, let me introduce into the record exhibit 2, and you have the books; you can refer to it. It is transcript of the relevant portion of the audiotape recording of the September 14, 1988, boundary study public meeting.

[The exhibit can be found in the appendix.]

Mr. SYNAR. I don't know if you have listened to that tape recently, Dr. Powell, but we did in preparation for this hearing. Did you listen to that tape in preparation for the hearing?

Dr. POWELL. I have seen the transcript, Mr. Chairman, but I have not listened to the tape.

Mr. SYNAR. I would like to note that Mr. Doherty was not asked just a single question about the rerouting and its impact on the park. In fact, three different people discussed it with him.

Now, another interesting thing is that Mr. Doherty entered his first response by asking—now, this is important—“is that specific enough.” That is a curious statement; and at that point, Mr. Jim Cole, Mr. Shealer, and an unidentified participant followed up with additional questions.

Now, in response to various questions, Mr. Doherty says that the rerouted line will move, “closer to—just within, in fact—the existing Park.” And then at another point he responds that the land being proposed for trade to the college is, “essentially right along the Park boundary.” “There is a small 50-foot-wide section in that area.”

Finally, he states that the exchange and the rerouting would not affect the park adversely and that there are no known disadvantages.

And when asked by George Shealer if the rerouted line is going—is to go at, “the base of Oak Ridge,” he responds, “Yes.”

Now, if the college had done just that and what Mr. Doherty has stated, moved the tracks to the base of Oak Ridge, you wouldn't have opposed that, would you, Dr. Powell?

Dr. POWELL. No, I would not.

Mr. SYNAR. OK. Now, on the basis of the subsequent transfer, the land exchange, I guess the natural question is, you relied on the park service's word? Did you have or will you have in the future the same confidence in the park service to properly manage that resource or anything else, based upon that experience?

Dr. POWELL. Mr. Chairman, as you had asked in light of subsequent events, I have lost much of my confidence in the National Park Service.

Mr. SYNAR. Mr. Frassanito, would you come back up and, as you do, let me remind you, you are still under oath.

Now, in addition to being a member of the battlefield association, you were also a member of the Borough of Gettysburg Planning Commission in February 1989, correct?

Mr. FRASSANITO. Yes.

Mr. SYNAR. All right. Now, Mr. Van Arsdale, the treasurer and business manager for Gettysburg College, gave the borough planning commission a briefing on the college's intention on February 20 1989, 5 months after the final public meeting on the boundary study.

Mr. FRASSANITO. That is right.

Mr. SYNAR. At this time, I would like to introduce into the record exhibit 3, and if you will look in the book, it is in there. These are minutes from the February 20, 1989, meeting.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, at the time of that meeting, did you have any reason to question Mr. Van Arsdale's words or actions with regard to the things the college was doing on its property?

Mr. FRASSANITO. I had no reason to question what he was describing to me because what he was describing to the planning commission seemed like a very simple, wonderful idea; and I was amazed no one ever thought of it before.

Mr. SYNAR. Now, Dr. Powell, hadn't the former president of Gettysburg College, Dr. Glassick, written you a letter a year earlier, on February 8, 1988, addressing the college's grading of the battlefield property for playing fields?

Dr. POWELL. That's correct, Mr. Chairman.

Mr. SYNAR. OK. Now, at this point let me introduce into the record exhibit 7, the letter from Dr. Glassick to Dr. Powell.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, in this letter, Dr. Glassick states the college had voluntarily agreed not to use the land for any structures—

Mr. FRASSANITO. That's not the right—

Dr. POWELL. Exhibit 4, Mr. Chairman.

Mr. SYNAR. Exhibit 4, I am sorry. Thank you.

In that letter, labeled exhibit 4, he states that the college had voluntarily agreed not to use the land for any structures such as dormitories, et cetera, because of its significant historical presence; is that correct?

Dr. POWELL. That's correct.

Mr. SYNAR. Now, Dr. Glassick was talking about the 46 acres where the playing fields are and over which the park service got the easement; is that right?

Dr. POWELL. That's correct.

Mr. SYNAR. That's those 47 acres.

Now, Mr. Frassanito—

Mr. FRASSANITO. I might add one thing is that at the time he was talking about the playing fields that were already being desecrated and whose historical integrity were being compromised and these are just the playing fields between the campus and Howard Avenue, so it is a segment of the 47 acres but not the entire 47.

Mr. SYNAR. OK.

Now, at the February 1989 council meeting, did Mr. Van Arsdale show you a map indicating the western spur or the railroad maintenance building on the 7.5 acres they wanted and provide details of that?

Mr. FRASSANITO. Mr. Van Arsdale showed us one arch that just went from the Chessie line around to the base of Oak Ridge and up toward the Mummasburg Road. He made no mention nor did he depict anything about a land exchange, 7½ acres, the removal of the northeast quadrant of the cut, the fact that the cut was involved, he didn't mention the engine house, he didn't mention the side spur. He didn't mention that the 4 acres of historic woods would be decimated. He didn't mention that 40,000 square feet of the ridge would be excavated, and he also didn't mention that the rail line would entail 4,000—a 4,000-foot-long, 10-foot-high embankment at the base of the ridge. He mentioned none of that.

Mr. SYNAR. Given the tone of that answer, I take it you would have protested if he had.

Mr. FRASSANITO. I would have had a heart attack.

Mr. SYNAR. How would you describe the public notice given during this boundary study?

Mr. FRASSANITO. Congressman Goodling made it very clear that the public was to be engaged. The boundary study was designed to reach a consensus with the public. To all appearances, they bent over backwards to involve the public. I was on mailing list. I got newsletters. I got the boundary study itself in the mail. And because everything was being done so well, I had no idea there was a renegade cancer stuck in this project, and I was just completely floored when I found out that the most important component of this whole thing was the one thing that we never heard about.

Mr. SYNAR. All right. Now, other than the notice given on the boundary study, did the college or the National Park Service give the borough planning commission or you, as an interested citizen, any notice about the railroad relocation project and the land after September 1988?

Mr. FRASSANITO. The day that Mr. Van Arsdale briefed the planning commission, it was the first and only time anyone from the college, the railroad or the park service ever approached the planning commission. We would not hear any more about that land transfer and the excavation until we saw the bulldozers. In fact, that was the first time we learned there was going to be any excavation, so the answer is no.

Mr. SYNAR. OK. So there wasn't any—

Mr. FRASSANITO. None whatsoever.

Mr. SYNAR [continuing]. Local newspaper coverage, archaeological study—

Mr. FRASSANITO. There is—I want to point out here—and they have been hiding behind this ever since—you have a bait-and-switch-type situation. We did know that there was an intention to move the railroad line to the base of the ridge, but that is the extent of it; and they still try and pretend that, oh, what we meant was all this other stuff, and there was never any mention of any of that other stuff.

Mr. SYNAR. Ms. Barrett, can you summarize the responsibilities of Federal agencies such as the National Park Service under the Historic Preservation Act?

Ms. BARRETT. Well, the responsibilities for all Federal agencies when they undertake something is to consult with the State Historic Preservation Office and the Advisory Council on Historic Preservation and receive their comments on the project. That is under section 106 of the National Historic Preservation Act. Federal agencies who own historic land, such as the National Park Service or any other Federal agency, also are under a higher level of responsibility under section 110 of the Historic Preservation Act.

Mr. SYNAR. Let me ask you about section 110. Does it admonish Federal agencies that, to the maximum extent possible, they should undertake such planning and actions as may be necessary to minimize harm to the national historic landmarks?

Ms. BARRETT. That is what section 110 says, if you are reading from it.

Mr. SYNAR. All right. Is the Gettysburg National Park an historic landmark?

Ms. BARRETT. Yes.

Mr. SYNAR. Is the military park listed on the National Register?

Ms. BARRETT. Yes.

Mr. SYNAR. And the 7½ acre parcel in question today was, at the time, within the park boundaries itself, correct?

Ms. BARRETT. Yes.

Mr. SYNAR. Is the purpose of the Historical Preservation Act to render excellent Federal decisions?

Ms. BARRETT. Yes. Well, I don't know if it is excellent, but it certainly requires them. It certainly requires that there be consultation, yes.

Mr. SYNAR. Now, Ms. Barrett, what notice did the National Park Service give the Pennsylvania Historic Museum Commission about the railroad relocation?

Ms. BARRETT. Well, the notice that we received was the boundary study, which we commented upon, and that was the——

Mr. SYNAR. Well, based upon that study or that notice, did you know about the western spur that would be built on Oak Ridge, and the maintenance building?

Ms. BARRETT. No.

Mr. SYNAR. Did staff of the museum commission attend the boundary study hearings?

Ms. BARRETT. Members of my staff attended certain meetings—not the public meetings in the evening—but we did go out onsite with Jonathan Doherty and——

Mr. SYNAR. Were they present at the September 1988 meeting with Jonathan Doherty, who responded to questions?

Ms. BARRETT. I don't believe they were.

Mr. SYNAR. OK. On the basis of your review of the excavation of Oak Ridge, did the park service adequately plan its actions to, "as section 110 requires, minimize harm to the national historic landmark?"

Ms. BARRETT. No.

Mr. SYNAR. Do you think the park service recommendation to delete land met their obligations under section 110 of that act, just as we have heard testimony of the historical significance and it was on the National Register?

Ms. BARRETT. I think that, in principle, the land exchange was a good idea, but I don't think that the way it was carried out was in the best interests of the resource.

Mr. SYNAR. All right. Wasn't there significant erosion of the park land caused by the cut in the ridge?

Ms. BARRETT. Again, I can't comment on how much erosion there was, but certainly by when we went—and Dr. Kurt Carr and I went down to see what was happening in January of, I guess it was 1991—we were very concerned about the cut because it was clear that such an up-and-down slope could not be stabilized and that there was going to be erosion of some kind.

Mr. SYNAR. So the question of meeting section 110 is really not a question anymore; they didn't meet their obligations under section 110.

Ms. Barrett, can you describe the programmatic agreement between the State Historical Preservation officers and the National Park Service at the time of the land exchange?

Ms. BARRETT. Well, as I stated in my testimony, it was the responsibility of the National Park Service to involve the State Historic Preservation Office in any planning documents that they were preparing, which they did with the boundary study. In fact, there was quite an extensive consultation in developing the boundary study, but my understanding is that, based on that programmatic agreement, if the park service was carrying out actions within that agreement, our opportunity to comment happened at the planning stage.

And I might note that that boundary study deals with a scenario that goes forward into the future. We were not surprised to not hear about any actions, one, because we wouldn't have been consulted anyway; but two, because some of the actions proposed in there may not have even happened yet.

Mr. SYNAR. Let's ask about that. Did you request that the park service do an archaeological survey of the tract of land to be deleted and given to the college?

Ms. BARRETT. Yes, we did.

Mr. SYNAR. Mr. Carr, what was the purpose of that survey?

Mr. CARR. To locate significant archaeological resources; and they could be either prehistoric or they could have been historic and associated with the battle.

Mr. SYNAR. That survey is not the only analysis that you would consider in making a determination of eligibility of historical significance?

Mr. CARR. Right.

Mr. SYNAR. That is not the only thing?

Mr. CARR. No. Obviously, the historical significance of events that occurred there would be another.

Mr. SYNAR. Why didn't your commission request that as well?

Mr. CARR. All we understood is that there was going to be a land exchange; and later on, when we had the ICC action, we were notified there was going to be some construction there for the railroad spur.

We went out in the field. We happened to be going out there anyway. We went out in the field and we discussed it with both the park and the college, at the time, exactly what was going to take place there.

The project was described to us. There was only one building that was going to be affected, based on that field visit, we didn't think that building was significant and it was not eligible for the National Register. We knew that an archaeological survey was going to be conducted.

And therefore based on that analysis, we didn't think that there would be any effect to the resource, which this—

Mr. SYNAR. Did the park service provide you a 3-page executive summary report of the archaeological study dated August 6, 1990, that was prepared by R. Christopher Goodwin and Associates prior to the land exchange being executed?

Mr. CARR. We don't have that in our files.

Mr. SYNAR. Did the college or the railroad ever provide you with an executive summary report prior to the land exchange being executed?

Mr. CARR. Not to my knowledge.

Mr. SYNAR. Did the park service ever officially notify you that they had accepted the findings of the report and the recommendations for no further survey work as it related to the boundary study?

Mr. CARR. No.

Mr. SYNAR. Wasn't the park service required to bring section 106 of the Historic Preservation Act to closure through an official notice to your office of that study being done per your request?

Mr. CARR. To my knowledge, under the programmatic agreement that was in existence at that time, they didn't have to do that.

Mr. SYNAR. All right. At this time, I will introduce into the record exhibit 5. This is a written formal opinion of the Advisory Council on Historic Preservation with respect to the park service's compliance with section 106. This is a letter from Robert Bush, the Executive Director of the National Advisory Council, and it responds to the inquiry from the subcommittee.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Ms. Barrett, doesn't the Advisory Council conclude that the park service's failure to provide formal notice to you on their acceptance of the archaeological report and recommendations is, in fact, a violation of section 106? In short, the park service never got closure with you on this matter; isn't that correct?

Ms. BARRETT. That's what this letter concludes.

Mr. SYNAR. Is that what you conclude?

Ms. BARRETT. Well, it would have been good if we'd had a copy of that, but it wasn't clear to us at the time that we were going to necessarily get a copy of that archaeological report. We had made a recommendation——

Mr. SYNAR. But you, as the Advisory Council, are responsible for making sure that happens, are you not?

Ms. BARRETT. Yes, we are.

Mr. SYNAR. OK. What was the conclusion of the summary report with respect to the archaeological resources?

Mr. Carr.

Mr. CARR. Dr. Orr from the park service discussed this with me over the phone, and he said that no significant remains were found.

Mr. SYNAR. Now, the mere fact that no significant relics were found—I think one unfired miniball and some shards of glass—that doesn't necessarily lead one to conclude that there is no historical value, right?

Mr. CARR. Right. That means that there are not archaeological resources and, obviously, there can be other resources.

Mr. SYNAR. Do you agree with the witnesses that we had in the previous panel that there is ample written documentation that the Civil War battle activity that occurred on this land is significant?

Mr. CARR. Yes.

Mr. SYNAR. Is it the Pennsylvania standard when conducting a phase I archaeological survey that shovel tests will be spaced at 50-foot intervals?

Mr. CARR. In areas where you expect to find significant remains or high probabilities areas, yes.

Mr. SYNAR. With intervals at that distance, what is the degree of probability that resources will go undetected: high, moderate, or low?

Mr. CARR. It depends on the resources you are looking for. The professional archaeologists across the United States, in fact, have developed that standard, that testing interval; and it is our opinion that you will locate significant prehistoric archaeological sites when you use that interval. When looking for historic sites, especially when you have historic documentation to suggest where these locations might be, you should direct your testing in a different pattern.

Mr. SYNAR. Let's go back to the 3-page summary report which you eventually did receive. Did it include a map showing a tract of land to be deleted?

Mr. CARR. Again, to my knowledge, we did not receive that.

Mr. SYNAR. So you never received it at all?

Mr. CARR. No.

Mr. SYNAR. Did you later receive a 48-page draft with the appendices of that survey?

Mr. CARR. To my knowledge, we don't have it in our files and nobody knows about this. The results—I got the results over the phone from Dave Orr, and—

Mr. SYNAR. So you don't even have the draft?

Mr. CARR. No.

Mr. SYNAR. Were you aware that the park service had survey plats showing the western spur cutting through the southeast corner of Oak Ridge?

Mr. CARR. No. My staffperson, Sue Zacher, went out and discussed this in the field. Gettysburg is a favorite park of mine also and I have been going there since I was six, and I told her beforehand, make sure that there is not going to be any major construction involved with this.

She is a very conscientious person and she is very thorough in getting descriptions of projects. She went out there and came back; and she said, no, they are moving it from one end to the base of the hill, there would be no construction involved. So we assumed they were going to put a railroad track down on the surface of the ground and that would be it.

Mr. SYNAR. All right. The executive director of the Pennsylvania Historical and Museum Commission wrote to the park service regional director, James Coleman, on January 31, 1991, after excavation had begun complaining that the Commission had not been provided full information on the plans to relocate the railroad.

Yet in your testimony, Ms. Barrett, you conclude that the failure to provide such information was not a violation of section 106 of the Historic Preservation Act. Why did you conclude that?

Ms. BARRETT. Well, this is because section 106 is such a procedural statute. It doesn't require good preservation; it just requires that there be proper consultation. So I think someone could certainly be in violation of spirit of section 110, and that is, make bad decisions and destroy resources and still be fully in compliance with section 106, which is really a procedural approach which requires consultation when consultation is required.

I do want to clarify that perhaps our not following up to ensure that we got a copy of that archaeological report was a failure on our part, and that, I think—

Mr. SYNAR. Under that programmatic agreement that you have referred to that is in place today——

Ms. BARRETT. Under the new programmatic or the current one.

Mr. SYNAR [continuing]. Wouldn't the park service's failure to provide such a map constitute a violation of section 106?

Ms. BARRETT. Yes, I would think at that time. When we go into consultation on individual projects, we require maps——

Mr. SYNAR. So while, technically, the park service may have met its requirement under section 106 with respect to adequate notice provided to the public and your agency about the proposal to relocate the railroad, they did not meet the intent of the statute, did they?

Ms. BARRETT. Not the intent of section 110 for preservation, no. I think everyone agrees that the impact was not good to the battlefield resources.

Mr. SYNAR. Now, your office also reviewed the proposal to relocate the railroad as part of the application for the Gettysburg Railroad for the exemption from the Interstate Commerce Commission; is that correct?

Ms. BARRETT. Well, we received a copy of the Public Utility Commission's action, and we decided to intervene in that action to attempt to influence it.

Mr. SYNAR. Well, as part of that review, didn't you request that Gettysburg Railroad provide you a topographic map showing the proposed location of the new rail line?

Ms. BARRETT. Well, at that time, the work—the time we were involved with—you are talking about the Public Utility Commission action? At the time we were involved with the Public——

Mr. SYNAR. No, no. The Interstate Commerce.

Ms. BARRETT. I'm sorry. At that time, yes, we sent a checklist——

Mr. SYNAR. Did you ever get that map from the Gettysburg Railroad?

Ms. BARRETT. No.

Mr. SYNAR. Why didn't you require that map to be provided before approving the project?

Ms. BARRETT. Because we had sent someone out on an onsite visit, and at the onsite visit the project was——

Mr. SYNAR. Who was that person?

Ms. BARRETT. Susan Zacher.

Mr. SYNAR. As you may know, the subcommittee staff interviewed Ms. Zacher and learned that her specialty is determining whether existing structures qualify for the Historic Register. In fact, wasn't she just out at the college only to determine whether the Gettysburg Railroad's existing buildings qualified for the Historic Register?

Ms. BARRETT. She was there to look at the building demolition, but it was clear to us and to her at that time that they were proposing to abandon the railroad track that ran through the center of college and move it to the edge of the ridge.

Mr. SYNAR. She was given a tour by the park service official, right, who explained the whole thing to her?

Ms. BARRETT. Yes.

Mr. SYNAR. Now, Ms. Zacher informed the subcommittee staff that representatives of the college and Mr. Davidson, the park service official who conducted the tour, simply told her that the railroad would be relocated from the campus to the base of Oak Ridge. Is that what she also told you?

Ms. BARRETT. Yes.

Mr. SYNAR. And as you note in your testimony, Ms. Zacher was not informed during that site visit that excavation of the ridge would be undertaken, correct?

Ms. BARRETT. Correct.

Mr. SYNAR. So the basis of the site visit conducted by Ms. Zacher, the Commission decided to clear the project for ICC approval on August 15, 1990?

Ms. BARRETT. Yes.

Mr. SYNAR. Did you ever clear the railroad relocation project for the National Park Service's approval?

Ms. BARRETT. We did not review that individual action, no.

Mr. SYNAR. All right. Were you working from the assumption that the cultural resource staff within the park service knew exactly what the proposal was going to do and then they would approve it?

Ms. BARRETT. Yes. The National Park Service has internal procedures that deal with both archaeological and historic preservation issues.

Mr. SYNAR. So you were left to make this assumption because the park service did not officially indicate its acceptance of the archaeological survey report; isn't that right?

Ms. BARRETT. Yes.

Mr. SYNAR. Mr. Powell and Mr. Frassanito, did you contact anyone to lodge your protest against the excavation once it began?

Mr. FRASSANITO. The minute we saw those bulldozers. And from that moment until this moment 3 years later this thing has dominated my life. We have done everything we could to try and stop that.

Mr. SYNAR. When was the first time you contacted them?

Mr. FRASSANITO. Do you want the whole sequence of events?

Mr. SYNAR. No, we are going to go through this.

Mr. FRASSANITO. The first alarm sounded on January 10.

Mr. SYNAR. All right. How much of the ridge had they destroyed?

Mr. FRASSANITO. It was January 15, to answer your question. I called the park's office.

Mr. SYNAR. How much of the ridge had been destroyed at that point?

Mr. FRASSANITO. At that point they had just begun the excavation of the cut. There was minimal damage. Mainly what they had done for the several weeks prior was just clear trees which was, by itself, a violation of the third deed restriction.

Mr. SYNAR. About 10 feet is what we think they had done by January 15.

Mr. FRASSANITO. That sounds about right by January 22. [In my opinion, it would have been substantially less than 10 feet on January 15.]

Mr. SYNAR. So approximately how high is the ridge?

Mr. FRASSANITO. About 30 feet.

Mr. SYNAR. What was the result of your protest?

Mr. FRASSANITO. The park service went into a coverup. They started lying about the fact that the site was nonhistoric, that this was all discussed at five public hearings.

Mr. SYNAR. But they didn't stop the excavation?

Mr. FRASSANITO. They did absolutely nothing to stop it. In fact, they fought us.

Mr. SYNAR. How long did it take, the excavation?

Mr. FRASSANITO. By the end of April.

Mr. SYNAR. About 3 months.

Mr. FRASSANITO. Three months. The excavation began in early January and before that it was just trees so, yes, by the end of April.

Mr. SYNAR. Now, Ms. Barrett, did you do an onsite investigation of the construction after it was brought to your attention?

Ms. BARRETT. Yes, and——

Mr. SYNAR. When?

Ms. BARRETT. I can't give you the exact date, but before our letter to Mr. Coleman of January 31, we—Dr. Carr and I—went on-site, and at that time I think they were down, wouldn't you say about 20 feet of a 30-foot cut. They had cut down 20 feet at that point.

Mr. SYNAR. Did the commission try to attempt to stop or in any way influence the construction?

Ms. BARRETT. Well, we met with the National Park Service and with the college and——

Mr. SYNAR. Did you ask them to stop?

Ms. BARRETT. We asked them to try to slow things down so we could figure out what was going on, but at that time——

Mr. SYNAR. What did the college tell you when you met with them?

Ms. BARRETT. Well, everyone stated that this was in the plan and that it was needed as part of the land exchange.

Mr. SYNAR. You were familiar with the plan and you knew that it wasn't part of the plan, so did you question them about that when they said it was part of the plan?

Ms. BARRETT. Well, we questioned them, yes.

Mr. SYNAR. What did they say?

Ms. BARRETT. Well, basically that what was done was done and that this was needed as part of the land exchange.

Mr. SYNAR. And you concluded that that was what you had to take as an attitude, what's done is done?

Ms. BARRETT. We were concerned, but we felt that—as an archaeologist, I have to say once you cut into a piece of land it is never going to be same. Once you take something and cut down vertically, you can't replace something like that very easily, you can't put the piece of cake back.

Mr. SYNAR. Could you have sought an order from the State Public Utility Commission or any other State entity for an injunction to cease and desist?

Ms. BARRETT. I think the only thing we could have done was go into Federal court, and I don't think our agency was ready to do something like that. This was really covered by, if anything, by Federal statute, not by anything in the State law. Pennsylvania

hasn't always been successful. Our State, you know, brought an action against the Gettysburg Tower construction and lost.

So I don't think if you look at State law we had really a leg to stand on. And the Public Utility Commission action for the relocation of the railroad building—I should note that was the State public utility action—only came later when the borough denied the railroad the right to build a railroad building where they wanted to build it. So that action came subsequent to the actual cut.

So other than going into Federal court which as a State agency we might have been able to do that, and we did not do it.

Mr. SYNAR. Dr. Powell, did you happen—what happened when you went to Mr. Cisneros, the park superintendent, about the construction?

Dr. POWELL. Well, Superintendent José Cisneros' first reaction was one of perplexion. He seemed perplexed, and then subsequently denied that there was any problem. In fact, at one point in a very early telephone conversation he seemed more concerned that my efforts to raise questions were an effort to sabotage the administration of the existing park.

It became very obvious to me at that point very early on that something more was going on here than met the eye, that my attempts to write letters on behalf—at that time in my capacity as a borough official and later as a GBPA representative—were being met by stonewalling.

Mr. SYNAR. Let me ask you this: Did he give any indication that he would try to do something or try to figure out—what was at least some exploration of ideas and the concerns?

Dr. POWELL. Again, at first, he seemed perplexed by the problem and then subsequently did not show any interest in our level of interrogation. He seemed to be more interested in protecting the park's interests in the matter.

Mr. SYNAR. Let me thank this panel for what has been very important testimony also. We appreciate your attendance here today and we would invite you to stay with us.

Mr. SYNAR. I would like to call on the fourth panel. Dr. Gordon Haaland, president of Gettysburg College, accompanied by William Walker, director, public relations; Dr. Gabor Boritt, Civil War history professor; Dr. R. Christopher Goodwin, archaeologist; and William Van Arsdale, former treasurer/business manager.

Gentlemen, you saw from the previous panels the swearing in of witnesses. Do any of you have any objection to being sworn?

[Witnesses sworn.]

Mr. SYNAR. I guess we will begin with you, Dr. Haaland. And again as I told the previous panels, your entire testimony would be made part of the record. We would ask you to summarize in about 5 minutes.

STATEMENT OF GORDON HAALAND PRESIDENT, GETTYSBURG COLLEGE, ACCOMPANIED BY WILLIAM WALKER, DIRECTOR, PUBLIC RELATIONS, AND GABOR BORITT, CIVIL WAR HISTORY PROFESSOR

Dr. HAALAND. Thank you, Mr. Chairman.

I am Gordon Haaland, president of Gettysburg College. I am pleased to have this opportunity to appear before your subcommit-

tee with regard to the exchange of land between Gettysburg College and the Gettysburg National Military Park.

To better understand this exchange, we have prepared this aerial photograph to my left. From the outset, I would want to state two major points. First, it is my belief that the primary effect of the transfer is to protect in perpetuity the essential historic character of 46.75 acres of land owned by Gettysburg College. This land was significantly involved in the first day's battle of Gettysburg.

The college exchanged a scenic easement on these acres for 7.46 acres of land along Oak Ridge, land that is less visible, less accessible and less historically significant than the 46.75 acres. On the 7.46 acres of land we wanted to relocate a railroad track that previously separated one-third of our campus from the other two-thirds. The previous location of the railroad track which was in fact not present in 1863 precluded development of the area of our campus west of the railroad tracks because trains often blocked access to this area and created safety concerns for our students.

Had the exchange not taken place, Gettysburg College would have had no alternative other than to look to the 46-acre tract that clearly figured in the battle as a site for future college development. The college recognizes the importance of preserving national historic sites, and we were pleased to work with the park service to protect this 46 acre area.

My second major point is that Gettysburg college entered into the negotiations with the National Park Service under the reasonable expectation that if we met all of the requirements of numerous Federal and State agencies whose approval was required that we would be assured that the arrangement was in the public interest. For more than 3 years we responded accurately and promptly to a multitude of requests for information, reports, maps, and other data from 12 Federal and State agencies, organizations, and legislative bodies.

Included among that information we supplied an archeological survey of the 7 acre parcel which has been referred to before. This was a firm suggested, approved and supervised by the National Park Service. The result of the survey, as you know, discovered a single unfired minieball and the conclusion that the exchange and the railroad would impact no significant cultural or historical resources.

All of the government agencies confirmed the fact that the exchange conformed to the standards of U.S. Government and Commonwealth of Pennsylvania regulations. I think it is reasonable, therefore, for us to assume that the exchange is in the public interest.

Let me briefly return to the historic question. Note, the historian of the Gettysburg National Park who was interviewed by the archaeologist said the area in question was a wood lot at the time of battle. She did not point out any military significance of the cut.

Note, there is only one historic marker near the site indicated by the orange dot on our map, and this was marking the site of a Confederate battery during the last 2 days of the battle. There is little indication of activity during the first day's battle, and you can see from the numbers of orange dots and the previous testimony much

of the action was from Oak Ridge heading to the west, not on the eastern side.

Note, the area in question is not the historic railroad cut that is widely written about. That site is the ripple, as was referred to earlier, that was the scene of a heroic activity of the 6th Wisconsin and is marked by a green circle on this map.

Note, there is no mention of fighting in this site in the standard history "The Gettysburg Campaign," by Coddington; "Gettysburg: A Battlefield Atlas," by Symonds; or in Bachelder's pictorial map authenticated by General Meade, nor in Bill Frassanito's "Gettysburg: A Journey in Time."

This is a key point. Although future historians may find marginally different information, we acted on the best resources we had from respected persons. All this strongly indicates that the significance of the land in question is not nearly as high as that of the 46-acre tract. The relative historic value is demonstrated by the orange dots representing historic markers and cannons.

In each of these instances these markers are placed where there was general action, not just because there were roads nearby. Near the cut there is one, near the 46-acre track there are 28.

Recently we asked two highly respected professional historians to review this situation. Although they know the battle of Gettysburg well, they are not narrow military historians. They have a broad view of Civil War that enables them to provide some perspective.

Dr. Robert Bruce, professor emeritus of Boston University, and a Pulitzer prize-winning Civil War historian, says, "The plot of ground at issue has never been called to my attention as significant in itself or as part of the overall milieu of the battle."

Dr. William Gienapp, professor of Civil War history at Harvard University, says, "I have never read anything about or seen any evidence substantiating the claim that an important action took place at Oak Ridge on the eastern end of the railroad cut in the afternoon of the first day."

Historian Robert Bruce sums this up by saying, "The college's easement on a much larger scenic area of the battlefield strikes me as a far more valuable quid pro quo. From the viewpoint of an ardent preservationist, the arrangement would seem highly advantageous."

Thank you, Mr. Chairman.

[The prepared statement of Dr. Haaland follows:]



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 Gordon A. Haaland
 President

TESTIMONY OF GORDON A. HAALAND
 PRESIDENT, GETTYSBURG COLLEGE
 BEFORE THE SUBCOMMITTEE ON ENVIRONMENT,
 ENERGY, AND NATURAL RESOURCES
 U.S. HOUSE OF REPRESENTATIVES

MAY 9, 1994

Chairman Synar:

I am pleased to have this opportunity to appear before your subcommittee to answer questions regarding an exchange of land between Gettysburg College and the Gettysburg National Military Park of the National Park Service.

Overview

From the outset, I want to state two major points. First, it is my belief that the primary effect of the transfer is to protect in perpetuity the essential historic character of 46.75 acres of land owned by Gettysburg College. This land was significantly involved in the first day's Battle of Gettysburg. The College exchanged a scenic easement on the 46.75 acres for 7.46 acres of land along Oak Ridge, land that is less visible, less accessible, and far less historically significant than the 46 acres. On the 7.46 acres of land we wanted to relocate a railroad track that previously separated one-third of our campus from the other two-thirds. The previous location of the railroad track—which was, in fact, not present in 1863—precluded development of the area of our campus west of the railroad track, because trains often blocked access to the area and created safety concerns for our students. Had the exchange not taken place, Gettysburg College would have had no other alternative than to look to the 46-acre tract that clearly figured in the battle as a site for future development. The College recognizes the importance of preserving national historic sites and was pleased that we were able to work with the Park Service to preserve this important 46-acre area.

My second major point is that Gettysburg College entered into negotiations with the National Park Service with the reasonable expectation that if we met all of the requirements of numerous federal and state agencies whose approval was required, that we would be assured that the arrangement was in the public interest. For more than three years we responded accurately and promptly to a multitude of requests for information, reports, maps, and other data from twelve federal and state agencies, organizations, and legislative bodies. Included among these agencies and

bodies were the Pennsylvania Public Utilities Commission, Pennsylvania Historical and Museum Commission, Pennsylvania Department of Transportation, Pennsylvania Attorney General's Office, Interstate Commerce Commission, Federal Railway Administration, Gettysburg National Military Park, National Park Service, Department of the Interior, U.S. Senate, U.S. House of Representatives, and the White House.

Included among the information we supplied was an archeological survey of the 7-acre parcel performed by an archeology firm suggested, approved and supervised by the National Park Service; the result of that survey was the discovery of one unfired Minie ball and the conclusion that "the exchange and the railroad would impact no significant cultural or historical resources."

All of the government agencies confirmed the fact that the exchange conformed to the standards of U.S. Government and Commonwealth of Pennsylvania regulations. I think that it is reasonable for us to assume, therefore, that the exchange is in the public interest.

Since the subcommittee inquiry into the exchange was initiated late last year, Gettysburg College has gone to considerable effort and expense to comply with your requests for information, and I am pleased to address the issues raised by your letter of April 27, 1994. You should understand, however, that most of the negotiations concerning the land exchange were handled by Former College Treasurer William P. Van Arsdale. On May 31, 1993, Mr. Van Arsdale resigned his position and is no longer working for the institution. Regrettably, much of the institutional memory of the land exchange departed with Mr. Van Arsdale, and the pressing duties of his new job have limited our ability to consult him. He will, however, be present to testify. The information below is based largely on our review of the written record, including correspondence, legal papers, and other such documents.

Historical Question - What is the relative historic significance of the two parcels of land?

Since the exchange was consummated in September of 1990, several critics have raised questions about the historical significance of the area at the southern end of the 7-acre tract that includes a Y-shaped switching area for trains and an engine house for the Gettysburg Railroad.

Without doubt, there was military action throughout the northwest quadrant of the Borough of Gettysburg where the College and the land in question are located, but the preponderance of the evidence indicates that the 7-acre area was much less significant than the 46-acre tract that was preserved by the exchange.

The following is the historical evidence available to the College and the National Park Service at the time the exchange was consummated and the excavation was undertaken:

- There is and was **only one historic marker near the area**; it is at the top of Oak Ridge and marks the site of a Confederate battery that participated in the bombardment in preparation for Pickett's Charge on the third day of the battle; there is no indication of activity on the first day of battle. That marker on the site of the Confederate battery was unaffected by the excavation. Contrary to rumors, a cannon that was previously on the site was removed by the National Park Service some years before the exchange, because the site was so remote that the cannon was being vandalized.
- The marker on top of the ridge is the only marker near the exchange area. **If the area in question was the site of intense military activity, why were there no other markers or signs indicating its significance?** Why is there no way into the site other than through private property? Why is the path that goes through private property unmarked and so poorly maintained? In the 130 years since the battle, veterans of the battle, the National Park Service, and scores of historians have done little, if anything, to point out and to interpret this area of the battlefield. I believe that this says a great deal about the historical significance of the area in question. **Unlike the cut area, which has only one historic marker nearby, there are 28 historic markers, monuments, and cannons adjacent to the 46-acre parcel that is protected by the scenic easement.**
- The railroad cut in question is clearly not the "historic railroad cut" that **figured prominently in the first day of the battle, as some people have charged.** That site, where the 6th Wisconsin distinguished itself, is several hundred yards west of the area in question, and it is clearly marked by numerous historic monuments and markers. Some people have misled the public about this critical fact.
- **The area of the railroad relocation is on the non-military side of Oak Ridge, that is, the side of the ridge away from the battle.** Although Federal troops probably retreated over the land in question as they did all over the land in Gettysburg's northwest quadrant, they would have defended the west side of the ridge, where they would have had the significant military advantage of height. There is no record of significant fighting occurring on the east side of the ridge at the point in question.
- An archaeological survey found **only one Civil War artifact in the 7-acre tract: an unfired Minie ball.** The fact that the bullet was unfired suggests that it was dropped, perhaps by a Union soldier retreating near the end of the

first day's battle. The archaeologist who conducted the study was chosen by the College from a list of archaeologists approved by the National Park Service. The Scope of Work for the archaeological survey was determined by the National Park Service, and the work was supervised by the National Park Service.

- As a part of the archaeological survey, the archaeologist interviewed the historian of the Gettysburg National Military Park about the historic significance of the land in question. According to the archaeologist's contemporaneous records, that Park official indicated that the area at the southern end of the 7-acre tract was a woodlot at the time of the battle. Although the Park historian noted the possibility of military activity in the northern area of the exchange, she did not indicate that there had been any military activity in the southern end of the area—the area that is now in question.
- There is no report of significant military action at the area in question in Coddington's standard history of *The Gettysburg Campaign*, in Craig Symonds' *Gettysburg: A Battlefield Atlas* or in Bachelder's pictorial map of the area, the only map which was authenticated by General George Meade, the commanding general of the Army of the Potomac during the Battle of Gettysburg. This is a key point. Even if future scholars turn up marginally different information, we had to make decisions based on what we knew at the time the exchange was consummated.
- After reviewing these matters, both the archaeologist and the Pennsylvania Historical and Museum Commission concluded, in the words of the commission, "In our opinion this project will have no effect on archaeological or historic resources."
- The 7-acre exchange site is difficult to access and to view, making it also relatively difficult to interpret.

As a result of the recent controversy, we have consulted two other experts about this matter. The experts we consulted are not narrow military historians. Although they know the Battle of Gettysburg well, they also have a broad view of the Civil War that enables them to provide some perspective to the current issue.

Dr. Robert V. Bruce, professor emeritus of history at Boston University and Pulitzer-Prize-winning Civil War historian, recently wrote, and I quote, "The plot of ground at issue has never been called to my attention as significant in itself or as part of the overall milieu of the battle."

Dr. Bruce's point is confirmed by Dr. William E. Gienapp, professor of Civil War history at Harvard University, who recently wrote about this situation, "I have never read about or seen any evidence substantiating the claim that an important action took place at Oak Ridge on the eastern end of the railroad cut in the late afternoon of the first day as Union troops retreated toward the town."

The letters written by Dr. Bruce and Dr. Gienapp are appended in full to this testimony.

I submit that all of this information would indicate that the historic significance of the exchanged land is not nearly as high as the significance of the 46-acre tract that is protected in perpetuity by the exchange.

The Scenic Easement

The agreement that the College reached with the National Park Service protected in perpetuity the essential historic character of 46 acres of land that figured prominently in the first day's Battle of Gettysburg. The area was the site of Confederate General Rodes' attack on the Union line north of Gettysburg. Unlike the 7-acre tract that has only one historical marker nearby, there are 28 monuments and historical markers in close proximity to the 46-acre tract, documenting the historical significance of the area.

This area was prime development property, and it would have been possible for Gettysburg College to sell the long frontage along the Biglerville Road and other parcels for substantial amounts of money. Just north of the 46-acre tract, in fact, is a Ford Motor Company dealership built in the recent past; the presence of this facility indicates that the tract was quite developable from a commercial point of view.

We, however, were not willing to sell the land for monetary gain, nor did we want to expand our campus buildings onto the historically significant site. Instead, when the National Park Service approached us about negotiating a scenic easement on the site, we searched for a way to open for development the area of our present campus formerly separated from the main part of our campus by the railroad track. The land exchange gave us the opportunity to move the track to the west, and thus open the remainder of our campus to development.

The scenic easement the College granted the National Park Service precludes our building permanent structures on the site, but it does authorize the College to develop and maintain playing fields. Several fields have been constructed by filling in some areas to provide level spaces. It should be noted that playing fields had been constructed in the area as early as the 1940s; before that, the area was in agricultural use, which had surely altered its topography over the years.

Moreover, the grading and filling that we recently undertook were done in a manner that preserves the essential historic character of the land, leaving the fields open much as they were in July of 1863. A visit to the site will confirm that the character of the fields has not been violated by the work and that the same gently rolling topography is maintained, so that visitors can immediately grasp the nature of the military action in that area.

Construction began on the fields before the exchange was consummated, and the National Park Service was aware that this activity was to take place. It is permitted by the easement. The College did not conduct an archaeological survey of this tract because none was required by the National Park Service.

Response to NPS Requests for Information

Your letter of April 27, 1994, raises a question about "whether Gettysburg College fully, and in a timely manner, disclosed to the Park Service all pertinent information regarding their plans for development of the exchanged lands." To my knowledge, Gettysburg College responded accurately and promptly to every request made by the responsible officials of the National Park Service, and it is my belief that the College did provide all of the pertinent information in a timely manner.

To substantiate my belief, I would point to several facts:

- The map of March 14, 1989 (Revised January 19, 1990) indicates clearly and precisely (with survey points) the routes of the rail spurs in the southern area of the 7-acre tract, the land that is at issue. According to a letter of February 23, 1990 from National Park Service Official Gerald L. Kirwan, this map was received and reviewed by Mr. Kirwan and Mr. Jonathan Doherty, NPS officials responsible for land acquisition. According to our records, the map of March 14, 1989 (Revised January 19, 1990) was the last map prepared by the College before the consummation of the exchange, and it is apparent from the letter dated February 23, 1990, from Gerald Kirwan, that the map provided the information required by the National Park Service.
- During the November 18, 1989 site visit of the U.S. House of Representatives Subcommittee on National Parks and Public Lands which was considering the Boundary Bill, College Treasurer William P. Van Arsdale made a presentation at the cut area to several Congressmen and National Park Service officials. Congressman William Goodling (R-Pennsylvania) recalls that Mr. Van Arsdale described how the railroad tracks would run and the excavation that would be required to accommodate them.

- Finally, the fact that the National Park Service consummated the exchange indicates that the cognizant officials believed that they had adequate information about the land. These officials are quite knowledgeable about land surveying methods, maps, and all types of construction (including railroad construction), and I feel certain that they understood the arrangement.

I am aware that members of your staff have raised additional questions about the map of March 14, 1989 (Revised January 19, 1990). The questions center on the omission from this map of several of the contour lines and the cross-sectional profile that were present on an earlier map dated December 28, 1988.

Based on discussions with our surveyor, Mr. Riley Redding of Adams County Surveyors, we have determined that although these two maps appear to be quite similar, they are not, in fact, the same. There are actually quite significant changes in the route of the railroad tracks and other matters that caused Mr. Redding to draw a totally new map (the January 19, 1990 revision of the March 14, 1989 map). Mr. Redding states that the last features he puts on a map are the contour lines and the cross-sectional profile, and these features were not completed at the time that the National Park Service needed the map. Had the Park Service indicated that these features were necessary for interpretation, we would have certainly complied. I believe, however, that the skilled professionals of the National Park Service should have been and, in fact, were able to determine the scope of the work that was to take place. Their public statements since that time have indicated that they were aware of the extent of construction required for relocation of the railroad tracks.

Negotiations Since the Exchange

Since the exchange was consummated and construction undertaken, we have met on numerous occasions with officials of the National Park Service and the Gettysburg National Military Park to resolve issues associated with land use.

One of the most pressing concerns has been to stop the erosion that has occurred in the cut area as a result of the railroad's excavation activity. From the outset, the College has taken full responsibility for this problem and we have invested approximately \$325,000 in building a gabion wall and making other repairs to the area to stop erosion.

We have also provided landscaping for the remainder of the area and, as promised, we have planted numerous trees to screen the area at the southern end of the 7-acre tract from the campus. Although the area is not visible from most public streets or spaces (including from the battlefield to the west), the screening agreed upon with the Park Service will effectively eliminate any view of the site from public areas.

We have also worked with the National Park Service to limit the height of the engine house that has been constructed on the site, and we have painted the building in colors designated by the Park Service.

Currently we are negotiating a Memorandum of Understanding with the National Park Service that will further define the use of the 7-acre tract. You have received a copy of the current draft of this Memorandum. I am certain that we will develop a document that will meet the needs and observe the rights of both the College and the public.

During all of these negotiations, officials of the Gettysburg National Military Park and the National Park Service have proceeded in a professional manner that is fully consistent with their duties as conservators of the public trust. I believe that we at Gettysburg College have also conducted ourselves in a similar manner.

Conclusion

As in any other similar undertaking, the exchange of land between Gettysburg College and the National Park Service was a compromise between the rights of the College and the desires of preservationists. Certainly those who believe that every piece of land in Gettysburg should be preserved the way it was in 1863 were not pleased. But I would submit to you that had the College been forced to build new structures on the battlefield land we own north of town, these same critics would have been much more disturbed. From my point of view, and that of many other responsible citizens and government officials, the exchange was in the public interest because it preserved 46 acres of historically significant, very prominent land, at the expense of 7 acres of less historically significant, much less prominent land.

Perhaps Pulitzer-Prize-winning historian Dr. Robert V. Bruce best summed up the situation when he said, "The College's easement on a much larger scenic area of the battlefield strikes me as a far more valuable quid pro quo. From the viewpoint of an ardent preservationist, the arrangement would seem highly advantageous."

When viewed from this perspective, the exchange was a reasonable compromise reached by a responsible federal agency and a conscientious educational institution. Gettysburg College is quite mindful of its responsibility to preserve our national heritage, and it is my firm belief the exchange is fully consistent with our sense of responsibility.

Gordon A. Haaland
President

HARVARD UNIVERSITY

DEPARTMENT OF HISTORY

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ROBINSON MALL

May 2, 1994

Professor Gabor Boritt
 Civil War Institute
 Gettysburg College
 Campus Box 435
 Gettysburg, PA 17325-1486

Dear Gabor:

I understand that you have been asked to testify concerning a dispute over the Gettysburg College and some land in the area of the first day of the battle (July 1, 1863).

I teach the Civil War at Harvard University and have read extensively in the period. I have also visited the battlefield several times, and I have taken three guided tours of the battlefield, including one lasting nine hours that was led by Ed Bearrs, chief historian of the National Park Service.

Writing history is never a closed endeavor, since there is always the possibility that new sources and new information may be uncovered. But no battle in American history has been as intensively studied as Gettysburg, and I have never read about or seen any evidence substantiating the claim that an important action took place at Oak Ridge on the eastern end of the railroad cut in the late afternoon of the first day as Union troops retreated toward the town. Skirmishing was constant in battles, but I find it hard to believe that any significant fighting occurred here without it being noted previously. It certainly is not mentioned in the standard accounts of the battle I know, including Coddington's exhaustive study. If there was any organized fighting at this site, it certainly was not of any particular importance.

Gettysburg is the most heavily visited Civil War battlefield in the country, and it has become a symbol of the war. In a move to restore the battlefield to its earlier appearance, the Park Service has replanted the peach orchard and is rebuilding the heavy rail fences that once lined the main roads. There is much more the government could and should do to preserve this battlefield. Removing the tower, which is a monstrosity that desecrates the field, would be a beginning. The commercial establishments that extend almost to the visitor center are an eyesore and are located in an important region of the battlefield. But there is no way, even if the original buildings still existed, that the battlefield can be restored to its condition in July 1863. To do so would mandate removal of all the monuments, relocation of the national cemetery, and destruction of the roads and trails that allow modern

-2-

visitors to go to various sites. It demeans the battlefield preservation movement, which I strongly support, to focus on minor and unimportant details such as are involved in this dispute with the College. The present controversy is over trivia.

Sincerely yours,

William E. Gienapp

William E. Gienapp
Professor

Boston University

College of Liberal Arts
226 Bay State Road
Boston, Massachusetts 02215

Department of History



May 4, 1994

President Gordon Haaland
Gettysburg College
Gettysburg, PA 17325-1486

Dear President Haaland:

So far as I understand it, I consider the dispute over the land transaction between Gettysburg College and the National Park Service to be absurd. I first toured the Gettysburg Battlefield in 1959 under the expert guidance of the then park superintendent and have repeated the tour at least a dozen times since. I have also read the authoritative account of the battle by Edwin Coddington as well as a number of books dealing with aspects of it, most recently The First Day at Gettysburg (1992), edited by Gary Gallagher, and In the Bloody Railroad Cut at Gettysburg (1990) by Lance J. Herdegen and William J. K. Beaudot. The plot of ground at issue has never been called to my attention as significant in itself or as part of the overall milieu of the battle. The college's easement on a much larger scenic area of the battlefield strikes me as a far more valuable quid pro quo. From the viewpoint of an ardent preservationist, the arrangement would seem highly advantageous.

Yours truly,

Robert V. Bruce

Robert V. Bruce

Professor Emeritus of History

Mr. SYNAR. Thank you, Dr. Haaland.
Mr. Van Arsdale.

**STATEMENT OF WILLIAM VAN ARSDALE, FORMER
TREASURER/BUSINESS MANAGER, GETTYSBURG COLLEGE**

Mr. VAN ARSDALE. Thank you, Mr. Chairman.

I am pleased to be here. This is the second time I have had an opportunity under oath to discuss this exchange and look forward to it. March 1985 is when I first became involved in this process when I arrived at the campus for an interview.

In my normal early morning jog, I discovered the railroads bisecting the campus, as you can see on the map. After I joined the employ of the college, it was one of my projects to move streets, close streets, and also at the same time try to find a way to relocate the railroad. During that research, I found that had already taken place 5 or 6 years before that when the railroad had sought a Y or a western access to the CSX line on the map, as you can see. The railroad was not the owner, the Gettysburg railroad was not the owner of the line. The Federal Railway Administration owned the majority of it along with the Department of Transportation and the Gettysburg railroad.

Through that exchange we purchased and had first of all the railroad purchase for \$1 million the Federal Railway Administration's rights to the railroad. At that point, we then, for one lump-sum figure, purchased the railroad property and then proceed to give them an easement to operate their railroad line on the western portion of the campus. Early on we were going to be the contractors to make that move.

The board of trustees and the president, who had been informed continually on that process from 1985-86, on virtually every meeting we had, the railroad was an item on the agenda, whether on a subcommittee or on the full board of trustees, and if not as a full item on the agenda, it was brought up as an informal question as to how we were progressing with the railroad. The board of trustees directed us at that time not to be contractors for it but to purchase it for a lump sum, thereby letting the railroad take over the responsibility and the expense, depending on what variables they might run into in constructing the spur and the line.

We went through very many variations of where we were going to locate the railroad, as you can see from the documents. We had already talked about the possibility of the Gettysburg railroad purchasing part of the spur of the CSX in order to relocate their engine house either at the west end or the eastern end of the mountains. We discussed probably 20 to 25 different locations where that could have taken place. Most of them were cut out.

When we got to the point where we needed to discuss with the park service because there were some additional land that was required because we couldn't fit the Y on to the campus, we contacted the local park service who directed us to the Philadelphia National Park Service mid-Atlantic region. I think it is a land management group. We then worked with them on a constant basis, and as we went through those discussions, we kept being informed that we were dealing with the sovereign so they weren't negotiations but discussions.

Every time we would finish a meeting, we would leave the meeting with one question. The question was, what do we need to do and what else do we need to comply with? It became almost a ritual which could be confirmed with the individuals who were involved or with the college's attorney who was present.

Incidentally, one of those things I don't see in any of these mentioned thus far is the appraisal which was at the direction of the park service, that we would acquire an appraisal. Based on the appraisal list that they gave us, we selected a person who did the appraisal, both of the two parcels of property prior to the exchange and post the exchange.

The same thing happened on the archeological study. We were told we needed to perform an archeological study. We were given a list of people. We called some of those people, selected Mr. Goodwin's firm, and then turned Mr. Goodwin loose with the National Park Service to follow their strictures and their guidelines. We did not have any expertise in that field and let them deal directly with the National Park Service.

As for this letter, Mr. Glassick's letter, I just called Mr. Glassick a few weeks ago to confirm. I spoke with Mr. McLaughlin and told him on a secondary basis I believed there was such an agreement between Mr. Glassick and perhaps one of the people at the park service. He said I was wrong, he did not have that handshake, it was really with another person, so there is some confusion between that. So the information I gave you, Mr. McLaughlin, was not the same as you got with Mr. Glassick, and I corrected that also.

As for the minutes of the planning commission meeting on February 28, 1989, if you read those completely you could see that there wasn't a quorum and I had not seen those before, and so I had made a full presentation of all the items that we were talking about in our planning session that day, with a map which would have had a Y on it if that is where we were in that point, and if not, it wasn't there, but that was not even a formal session. There was not a quorum at that meeting, and it was just an informal discussion.

Thank you.

[The prepared statement of Mr. Van Arsdale follows:]

TESTIMONY OF WILLIAM P. VAN ARSDALE
BEFORE THE SUBCOMMITTEE ON ENVIRONMENT,
ENERGY, AND NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

MAY 9, 1994

I am pleased to be here today to tell you of my involvement in the exchange of land between Gettysburg College and the National Park Service.

As you know, the exchange was completed in September of 1990, when I was Treasurer of Gettysburg College, and I was the College officer responsible for the negotiations with the National Park Service which were subject to the approval of the President and the Board of Trustees. I have since left the employ of the College, but I am pleased to testify about the arrangement which I believe contributed to the future development of Gettysburg College and to the preservation of an important historic area.

I spoke with numerous officials of the National Park Service, but I was directed to deal specifically with the officials of the NPS Land Management Office at the Regional Headquarters in Philadelphia. In numerous meetings and telephone conversations, we explored many options to meet our mutual needs—the College's desire to secure a strip of land on which to relocate a railroad track that cut across our campus and the NPS desire to have a scenic easement.

During this period, I was asked to comply with many requests from the National Park Service, including requests for maps, appraisals of the two parcels (before and after the potential exchange), an archaeological study, and other information. I tried to reply to each request with information that the National Park Service desired. More than once, I was surprised to find that just as I thought that I had met all of the requirements of the Park Service, a new request or requirement would be mentioned to me. This became such a consistent pattern that I began ending each meeting or telephone call with one of these questions: "What must I do next?" or "Is there anything else that I must do to complete the exchange?" I am sure that those NPS officials with whom I worked and the College's attorney who participated in numerous negotiating sessions will confirm these recollections.

At the same time that I was conducting negotiations with the Park Service, I was also dealing with the Gettysburg Railroad, CSX Corporation, and many federal and state agencies that had responsibility for a variety of transportation and public-utility issues. Included among these are the Federal Railway Administration, Interstate Commerce Commission, Pennsylvania Public Utilities Commission, Pennsylvania Department of Transportation, and many others.

I tried to be as responsive as possible to those who required information. One factor that complicated my responses, however, was the numerous rail service configurations which we examined. Because the technical requirements I received from CSX and the Gettysburg Railway changed constantly, the configuration of the rail lines shifted considerably, and this is reflected in the numerous generations of maps that are now part of the record, and many more that were not part of the record due to their destruction in a fire. Thus, the answers that might have been accurate one day, could change swiftly if one of the railroads required a new switch, a new radius of the rail curve, or any other specification.

The complexity of this situation was compounded by the fact that during the same time that I was conducting negotiations with the National Park Service (only one small part of my job), I was also arranging financing, planning and managing the construction for the reconstruction of a major hotel in Gettysburg and overseeing renovation of virtually every academic building and many non-academic buildings on the Gettysburg College campus. In addition, we were also acquiring a motel, the historic Ice House property, closing and moving streets, building a bridge with the Borough of Gettysburg, adding parking lots, removing parking lots, plus managing all the financial and most of the non-academic services of the College. These years were exceedingly busy for us.

Within this ever-shifting pattern, I am certain of one thing: Each time that we were requested to provide information to a responsible Park Service official, we did so to the best of our ability. I believe that this helped contribute to a successful exchange of property, and I am pleased with the end result of the situation.

Mr. SYNAR. Thank both of you.

Let's start with you.

Dr. HAALAND. Mr. Chairman, may Dr. Boritt make a statement?

Mr. SYNAR. Very briefly.

Dr. BORITT. I did not understand that I would have a chance to make a statement.

Mr. SYNAR. We have a lot of questions for you which we would like to explore versus you making a statement. We will include your entire testimony in the record, if that would be better.

Dr. BORITT. If I could have 5 minutes, many historians spoke.

Mr. SYNAR. I will give you 3 minutes.

STATEMENT OF GABOR BORITT, HISTORIAN, DIRECTOR, CIVIL WAR INSTITUTE, GETTYSBURG COLLEGE

Dr. BORITT. Well, I will do my best, sir. I wrote this this morning before I came here, and it is handwritten, and I may have difficulties reading all of it carefully.

I love Gettysburg. The accent that you hear before you notwithstanding, it is my home, and my family's home. It is in Gettysburg that I raised and am still raising my children. It is there that my family took an old abandoned farm house about a mile as the bird flies from where Pickett's charge began, a home of a black man in 1863, the hospital of Confederate Gen. Sampson Barksdale, a place where just last week my wife found a bayonet from the Civil War era, where dozens of soldiers were buried, where I constantly find bullets, and to go back further, Native American arrowheads.

We took this land and we took the abandoned, vandalized old stone house and turned it into a beautiful home. My wife, my sons, and I, using mostly our own hands, with lots of friends helping us. We received awards for restoring the home and I have received other awards for work on local history. I am deeply fond of Gettysburg, its people, its institutions, including the college and the national park. After a trip away, when I return home I tingle with pleasure because of all that Gettysburg means to me.

At age 16 I was a refugee after the Hungarian Revolution of 1956. Gettysburg is a symbol of so much that is dear to me, the freedom this country has given me, and the sentinel place that it has in its history. I love Gettysburg.

There is no such thing as insignificant ground around Gettysburg. All the land over where the armies fought and marched is significant. Perhaps a 10-mile radius around Gettysburg holds, "historical significance." If you take the aftermath of the campaign, there is land all the way to the Potomac where Lee retreated. And Kent Brown would be able to talk about it. I myself just finished an essay on it which will be out in the fall.

Now to the 46 acres north of the college campus. I always had a special concern for the 46 acres. Ever since I arrived there in 1981, people have talked to me about what some preservationists call playing fields, and which I find quite unacceptable. Almost from day one when I heard about what will happen here, a hotel will go there, a retirement village, college buildings, dormitories, whatnot. When I heard that the national park and the college reached an agreement, that was like a holiday, a wonderful mo-

ment. This land would be safe forever, as far as there is forever in this world of ours. I was overjoyed.

I long feared what may happen to that land and what would happen if we would have five-story dormitories on the site of Dilger's and Wheeler's batteries. What if it would happen all along the line? Can this perhaps not happen today? We are too vigilant.

Well, I am not so sure. Things change. In the middle of the 11th Corps line, there is a Ford dealership today. It is the greatest obstacle to interpreting that part of the battle. The dealership has not been there that long. The land should have been saved. It wasn't. I understand there was no money available for it. The Kefauver School stands where the Louisiana Tigers charged. Again, it is now gone.

Right now the Civil War interest of the public is high. Battlefield preservation is important.

Mr. SYNAR. Doctor, I am going to have to interrupt you. We have given you 4½ minutes here. Let me just suggest we will include the rest of your testimony in the record. We had not intended for anyone else other than these two people in this panel to testify. We will be asking questions of all of you during this panel. The reason is that we had many witnesses who would have come forward and make statements about Gettysburg and we just couldn't permit that. We will get to some questions there if we could.

Dr. BORITT, you are a professor of history, a Lincoln scholar, a director of the Civil War institute of the college; is that correct?

Dr. BORITT. Yes, sir.

Mr. SYNAR. The Civil War institute is basically established at Gettysburg College to advance the studies of the American Civil War, correct?

Dr. BORITT. Yes, sir.

Mr. SYNAR. Gettysburg College is somewhat unique compared to other institutions in that its campus is actually part of the Gettysburg battlefield, isn't that right?

Dr. BORITT. Yes, sir.

Mr. SYNAR. Now you are familiar with the book "The History of Gettysburg College, 1832-1932," by Samuel Hefelbower?

Dr. BORITT. I handled it, sir, but I haven't read it, no. I have read into it, yes.

Mr. SYNAR. Isn't it true that the college was known as Pennsylvania College at the time of the battle but later changed its name in 1921 to Gettysburg College because of the fame the town was gaining?

Dr. BORITT. I do not know that. I do not believe that.

Mr. SYNAR. Dr. Haaland, wouldn't you agree that for better or worse Gettysburg College is held to a higher standard in terms of its concern for the preservation of historic resources because it occupies and is adjacent to the park?

Dr. HAALAND. I would agree that we have that responsibility.

Mr. SYNAR. Mr. Van Arsdale, beginning in 1987 and continuing through 1989, did the college truck in tons of fill to create level athletic fields on 46 acres in the northwest corner of the campus?

Mr. VAN ARSDALE. Yes.

Mr. SYNAR. Now, Dr. Haaland, the 46 acres of playing fields are located next to the president's house, are they not?

Dr. HAALAND. Part of it is, that is correct.

Mr. SYNAR. Now, given that sports are important to many college students, the cost of the college to creating those level playing fields and the proximity of the 46 acres to the president's house, what was the likelihood that the college would have ever built permanent structures such as dormitories on those 46 acres?

Dr. HAALAND. I think there was some likelihood down the road. We have, as the college has grown since our inception in 1832, those fields were acquired only in the 1950's and 1960's, and it was for the express purpose of permitting the college at some future date to have that option.

Mr. SYNAR. Now, Dr. Charles Glassick was the president of Gettysburg College when the playing fields were graded. Didn't Dr. Glassick actually have an agreement with the park service that no structures would be built on that property?

Dr. HAALAND. He apparently, through the letter which you have, which I have just seen, has said two things. First of all, that were the college to give up its future development rights, it would have to receive recompense for that.

Second, he has agreed in this letter that the college would honor, as it were, that issue. The president cannot speak, however, for the board. The board of trustees must be the organization. They are the corporate entity, and they must determine ultimately the disposition.

Mr. SYNAR. Let's refer back to exhibit 4 which is in front you. We put it in the record earlier. This is a February 8, 1988, letter from Dr. Glassick to Dr. Powell. It states that the college had an agreement with the park service that it would not build permanent structures on the 46 acres.

Now, the subcommittee staff spoke to Dr. Glassick, and he said that because the playing fields were so far removed from the center of campus that it would not have been practical to build fraternity or classroom buildings in this area.

Mr. Van Arsdale, the letter from Glassick to Dr. Powell also notes that several years before the grading began on the playing fields that the park service had urged the college to refrain from building structures on the 46 acres. Weren't you aware of the park service's desire to protect the property prior to the grading of the playing fields?

Mr. VAN ARSDALE. From future construction of buildings, yes.

Mr. SYNAR. Were you familiar with the draft land protection plan issued by the park service in 1986?

Mr. VAN ARSDALE. I was aware that there was a plan but I was not aware of the plan, I hadn't read the plan.

Mr. SYNAR. We found a copy of the draft land protection plan in your files that were provided to us by the college.

Now, appendix A of that plan is a map indicating parcels of land then outside the park boundaries at the time which the park service felt it critical to preserve. Included in these critical areas was 46 acres of the college campus that are now playing fields.

So despite the fact that the college was on notice in 1986 that the park service sought to protect the historic integrity of the land, the college preceded to grade the playing fields; is that correct?

Mr. VAN ARSDALE. It is correct that we proceeded to grade the playing fields. Our understanding was that it was to protect it from building any future buildings on it.

Mr. SYNAR. Now, as I note, Dr. Haaland, in Dr. Haaland's prepared testimony this land was to be leveled for playing fields, as part of the first day's battlefield at Gettysburg and a site of a significant battle action.

Mr. Van Arsdale, isn't it true that the college did not perform an archeological survey on the property before grading the playing fields or make any effort to preserve existing topography of those lands?

Mr. VAN ARSDALE. We built those fields for our future use. There was no one that gave us any——

Mr. SYNAR. Did you do an archeological survey?

Mr. VAN ARSDALE. No, no one told us we were required to do one.

Mr. SYNAR. Did you do the——

Mr. VAN ARSDALE. Part of that land had already been dug up to lay in the gas lines across there to put in the water pumping station.

Mr. SYNAR. OK.

Mr. Van Arsdale, I understand that you were treasurer at Hobart College in Geneva, NY, before coming to Gettysburg College.

Mr. VAN ARSDALE. Colleges of the Seneca was the corporate title. It operates Hobart College for men and William Smith College for women.

Mr. SYNAR. Before you came to Gettysburg, you had the responsibility for land development there. Isn't it true that that school found itself in quite a battle with local residents over the development of playing fields and the fundamental issue was that they had not been notified about the college's plans with respect to those fields?

Mr. VAN ARSDALE. Those were college-owned fields that we developed into playing fields, yes.

Mr. SYNAR. Is it true that local residents were not notified?

Mr. VAN ARSDALE. Some of those local residents were notified. I was just in that area 2 weeks ago and talked to some of those people. Our own faculty members and some of our staff members——

Mr. SYNAR. I will introduce into the record exhibit 8, two newspaper articles, both from August 1993, from Geneva, NY, which refer to you, Mr. Van Arsdale, and the issue of adequate public notice concerning the issue. Are you familiar with them?

[The exhibit can be found in the appendix.]

Mr. VAN ARSDALE. I am familiar with the project. I don't remember these particular articles.

Mr. SYNAR. The events at this situation and the Gettysburg College, Mr. Van Arsdale, would suggest a pattern of behavior on your part to withhold information from those who are likely to oppose that which you want to accomplish. Is that your general working practice?

Mr. VAN ARSDALE. I would disagree with that completely. In fact, if you would witness what we did in Gettysburg when we redid the ice house property that totally came from us, when we did the hotel, that totally came from us, and that is not the case. If you

look at the property that was acquired and became the office for Dr. Boritt, the Civil War house, that certainly wasn't the case.

If you talk with the neighbors about closing streets and moving streets, we certainly went up and down the street and talked with everyone there, that wasn't the case. When we closed and moved other streets in town and worked with the borough in reconstructing a bridge and working with all the people that were required there, that wasn't the case.

No, I would say that is not accurate.

Mr. SYNAR. All right.

Let's go to you, Dr. Boritt. He is claiming you and he have a good working relationship. Isn't it true that Mr. Van Arsdale never discussed the significance of the land with you before grading the playing fields?

Dr. BORITT. That is so, but I was on leave at Cambridge, England, at the time so he could not discuss it at that time. I found out when I came back.

Mr. SYNAR. All right. Dr. Boritt, attached to the college's prepared statements are letters from two of your colleagues, one from Harvard and one from Boston University, giving their views on the relative value of the 46 acres over which the college gave the park service scenic easement rights compared to the 7.5 acres the park deleted and gave the college.

Did you inform your colleagues that the college did not consult with you before tons of fill material were trucked into the grade and filled the 46 acres?

Dr. BORITT. These colleagues did not speak about those 46 acres except in terms of relative importance. These are playing fields, sir.

Mr. SYNAR. Did you inform your colleagues, though, of what the college had done?

Dr. BORITT. I assumed they knew. I didn't specifically talk about that.

Mr. SYNAR. But you did not specifically inform them?

Dr. BORITT. No.

Mr. SYNAR. Dr. Haaland, did the college pay for those two opinions that you have used in your testimony?

Dr. HAALAND. We did not.

Mr. SYNAR. Those were volunteered at their own expense?

Dr. HAALAND. As we said in the testimony, we requested.

Mr. SYNAR. OK.

Dr. Boritt, did you inform them that you wrote Mr. Van Arsdale to complain about the alteration of the battlefield maps?

Dr. BORITT. Would you repeat that question, sir?

Mr. SYNAR. The topography, did you inform these two colleagues that you wrote Mr. Van Arsdale to complain about the alteration of the battlefield topography?

Dr. BORITT. No.

Mr. SYNAR. At this time I would like to introduce in the record exhibit No. 36, which is in the exhibit book, an April 26, 1988, memo from you, Dr. Boritt, to Mr. Van Arsdale expressing his displeasure over the grading of the playing field.

[The exhibit can be found in the appendix.]

Mr. SYNAR. In fact, you were troubled by the college's lack of sensitivity for the battlefield, isn't that right?

Dr. BORITT. May I take a look at this for a moment, please?

Mr. SYNAR. Yes, you may.

Dr. BORITT. Yes, my memory was right, I felt that perhaps an archeological study would have been useful.

Mr. SYNAR. You were troubled by the lack of sensitivity, were you not? That letter indicates that.

Dr. BORITT. To a modest degree, yes.

Mr. SYNAR. Despite that, didn't you contact the chief park historian at the military park to express your displeasure about her public comments on the alteration of the playing fields and to suggest to her that such comments could jeopardize the boundary study?

Dr. BORITT. I?

Mr. SYNAR. Yes.

Dr. BORITT. I have no recollection whatsoever.

Mr. SYNAR. Mr. Van Arsdale, why didn't you consult with Dr. Boritt on the development of the playing fields?

Mr. VAN ARSDALE. Well, first of all, it is not the whole 47 acres; it is just the part in the upper corner over there that was filled in. We just added about three fields, four fields in there to where we already had our playing fields established, so it was just the right-hand corner of what we are looking at there. It was not the whole area that was acquired in the exchange.

Mr. SYNAR. Why didn't you consult Dr. Boritt, is the question?

Mr. VAN ARSDALE. He said he was away. Gabor and I——

Mr. SYNAR. Did you try to contact him?

Mr. VAN ARSDALE. Not that I recall, but we had an open discussion on many issues, not just development issues, but on fringe benefit issues and budget issues and developing the summary, we were in contact with each other quite often.

Mr. SYNAR. Mr. Van Arsdale, in your prepared statement you indicate you were responsible for a number of projects at the college. Did you work with a great deal of autonomy on those playing field projects?

Mr. VAN ARSDALE. Definitely not.

Mr. SYNAR. Did you provide frequent briefings to the board of trustees on this and other plant facility projects?

Mr. VAN ARSDALE. Absolutely.

Mr. SYNAR. Then the board of trustees was fully apprised of your plans to level the topography of the 46 acres of the battlefield to create the playing fields?

Mr. VAN ARSDALE. They were aware there were going to be new playing fields in the area.

Mr. SYNAR. At this point, let me insert into the record exhibit 7, a January 20, 1991, note from Mr. Jim Tarman, a board member, to you, Dr. Haaland.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Dr. Haaland, didn't this board member write to you expressing his concern that certain trustees and college administrators demonstrated an arrogant attitude toward historic issues?

Dr. HAALAND. Yes, that is in the letter.

Mr. SYNAR. Mr. Van Arsdale, although the park service and the Gettysburg Borough Planning Commission expressed concern to

you over the grade and fill work on the playing field, isn't it true that you did nothing to alter your plans?

Mr. VAN ARSDALE. That is correct.

Mr. SYNAR. So after the college had completed what it wanted to do with the 46 acres, Mr. Van Arsdale trucked in tons of fill, and graded the land for playing fields, the college was prepared to give the park service a scenic easement over the property in exchange for land to relocate the railroad; is that correct?

Mr. VAN ARSDALE. It is not 46 acres. Again, it is less than that, and also put it in proper perspective, that it could have been used for development. As President Haaland said, there were chances if we were going to lose some of our other portions on campus, we would have to look to that area to develop it.

Mr. SYNAR. After all that work, though, you were prepared to exchange it to the park?

Mr. VAN ARSDALE. I was prepared to exchange it to the park at any time as long as we couldn't sell it.

Mr. SYNAR. Dr. Boritt, after the college graded the playing fields, didn't you request that Mr. Van Arsdale inform you about the future college plans that affect the battlefield so that you could act as a liaison with the local historians?

Dr. BORITT. Yes, sir.

Mr. SYNAR. Now, despite your request, Mr. Van Arsdale never discussed the railroad relocation project with you, did he?

Dr. BORITT. That is true.

Mr. SYNAR. Dr. Boritt, were you notified of the public meetings on the boundary study?

Dr. BORITT. Yes, sir.

Mr. SYNAR. At this time I would like to introduce into the record exhibit 9, an official notice of the park service to you, Dr. Boritt, about the boundary study.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Although you were notified about the study, you didn't even attend one meeting, did you, Dr. Boritt?

Dr. BORITT. That is correct, sir.

Mr. SYNAR. The park service also provided you with a copy of the boundary study so you were at least generally informed about the college's desire to relocate the railroad and would have known it involved park land?

Dr. BORITT. Yes, sir.

Mr. SYNAR. Why didn't you attempt to find out more about the project from Mr. Van Arsdale?

Dr. BORITT. I assumed that it was in good hands. I assumed that the national park would take care of matters. I assumed that the college would act properly. I hoped that with all the interested people who would attend these meetings, that it would be a good development.

I, if I may go on, I am a full-time teacher. My first responsibility are my students, always, and will be. I am a writing scholar. I am also a parent of three children and so on. I live on a farm. In other words, some things you have to cut out of your life, especially if you think it is in good hands.

Mr. SYNAR. Well, let me ask you about that because I understand—

Dr. BORITT. It is not a lack of interest in preservation, sir.

Mr. SYNAR. That is fine, we are all very busy, and I know you have a lot of responsibilities, but after the Gettysburg Battlefield Preservation Association and others began to complain about the construction of Oak Ridge, did you attempt to verify the claims that it was historically significant land?

Dr. BORITT. What I did at that point was I set up a meeting hoping to see if something could be cleared from this and I understand that you can talk about the whole area, say Kent Masterson Brown spoke about it as did Dr. Sauers, quite ably describing the whole area's importance. Sure, it is important, everything is important.

Mr. SYNAR. Let me ask you, Mr. Walker, didn't Dr. Boritt tell you that any arguments that the 7.5-acre parcel of land was historically significant was, "hogwash"?

Mr. WALKER. He did say that, but it was in reference to another matter. It was the matter of the use of the term Seminary Ridge and as referring to the historic railroad cut specifically.

Mr. SYNAR. Now, Dr. Boritt, as director of the Civil War Institute, didn't you have the resources available to determine whether the land was historically significant and didn't you use them?

Dr. BORITT. Sir, it was on a reverse slope, and I understand that minor action happened at that very spot, and I understand that the ridge is part of a larger important activity. I understand much of the testimony I heard here, I fully agree, all this happened, sure. The question then becomes, how do you make choices in life, sir, and—

Mr. SYNAR. It doesn't appear to the subcommittee you made any choices.

Dr. BORITT. Oh, I disagree, sir. I disagree. You talked here about how, "the playing fields were not going to be developed." I don't believe that. Dr. Haaland says that it may be developed soon. Well, what if it doesn't get developed now, Congressman? What if not now, what if in the year 2015 we have a time when the Civil War is no longer so interesting to the public. We are now at a peak. How about if it plummets? It happened before, sir. What if the economy changes, sir? What if—let me finish, Congressman.

Mr. SYNAR. Let me ask you a question. You are sitting here defending yourself. The point we are trying to make is, you never sought any information, and now you are outraged after the fact, but it was your job to maybe at least consult and ask for information. How do you explain that?

Dr. BORITT. I am not outraged, you misunderstand, Congressman. I am not outraged at all.

Mr. SYNAR. It was hogwash. This is not historically significant. Mr. Walker is correct, you describe it as hogwash.

Dr. BORITT. You don't understand, sir.

Mr. SYNAR. Explain it to us.

Dr. BORITT. Specifically the hogwash was that the general public as a whole knows about the 6th Wisconsin and what happened at the railroad cut which is on the battlefield tour, and I felt there was an attempt made to confuse the public, and I still think that happened, and that is what I said, that is hogwash. In other words—

Mr. SYNAR. Dr. Haaland, does this incident reflect the sensitivity that Gettysburg College demonstrates for historical lands it occupies?

Dr. HAALAND. We have felt all along that this exchange was in the best interests of both the American public and the college, and in that sense I believe, and what we are saying is that indeed the historic record has generally attributed much more importance to the land that we have exchanged with comparison to the 7½ acres. That property on the 46 acres had been heavily farmed for many decades. It had changed its use and contours over many years long prior to the time at which the college turned that into playing fields.

Mr. SYNAR. Mr. Van Arsdale, in your prepared statement you concluded that you were pleased with the end result of the land exchange. Didn't you in fact tell the subcommittee staff during the interview with you that the only regret you had with the land exchange was that, "you didn't get more park land"?

Mr. VAN ARSDALE. Just in jest.

Mr. SYNAR. You now work for the American Symphony League of Orchestras so you obviously have some appreciation for cultural resources, classical music in particular.

Mr. VAN ARSDALE. I am in a fellowship program, sir. I do not work for them.

Mr. SYNAR. If I told you I was planning to frame an original work of one of the great classical masters but in doing so would erase parts of the source and cut off some of the others, you would probably find that pretty disturbing, wouldn't you?

Mr. VAN ARSDALE. Or if you cut out a part of a great opera or symphony, yes.

Mr. SYNAR. Mr. Van Arsdale, according to your testimony before the Pennsylvania Public Utility Commission on the relocation of the railroad maintenance building, you and Mr. Sloan Cornell, the owner of the Gettysburg Railroad, had been negotiating since late 1985, early 1986 to relocate the tracks. Did you conduct a site visit with Kathy Harrison, Fred Eubanks, and Bob Prosperi of the park service in August 1987 to discuss the relocation?

Mr. VAN ARSDALE. I have no recollection of the date, but I remember walking up the hill with Kathy and a group, yes.

Mr. SYNAR. Now the college says you conducted an onsite visit on November 18, 1989, with a congressional tour and at the time explained that the railroad tracks would cut through Oak Ridge. How did the college know that you were on the site and briefed Congressmen on the details of the planned railroad relocation?

Mr. VAN ARSDALE. I don't know because I don't recall that briefing. I brief lots of people. It could have been that one and maybe not, but I don't remember the November 18, 1989, briefing that you are referring to.

Mr. SYNAR. Now, subcommittee staff spoke with Fred Eubanks, Bob Prosperi, and Kathy Harrison, and they each confirmed that you were onsite on that visit at the November 1989. Did you tell them at the time that the railroad would be located on the base of Oak Ridge and that no trees would be cut without the approval of the park superintendent?

Mr. VAN ARSDALE. Not at—which one are you referring to, 1989?

Mr. SYNAR. November 1989. Excuse me, I am sorry, that is August 1987.

Mr. VAN ARSDALE. I can remember being up there with Kathy. I can remember her telling me that the monument which Bill Frassanito showed us was turned in the wrong direction, and wherever we were with the drawings, wherever we were with the progress, then that is what was explained to them.

Mr. SYNAR. Did you tell them at the time the railroad would be relocated at the base of Oak Ridge?

Mr. VAN ARSDALE. Wherever the location was at that point, that is what I told them.

Mr. SYNAR. Did you tell them that no trees would be cut?

Mr. VAN ARSDALE. As you know, it moved, it moved constantly.

Mr. SYNAR. Isn't it true that as early as September 1987 as the college plans for relocating the railroad were beginning to take shape, that in fact didn't you issue a request for proposals to engineering firms on the feasibility of relocating railroad tracks?

Mr. VAN ARSDALE. That is when we were still talking with the board whether we would do construction. It became clear to the board that we would not do the construction.

Mr. SYNAR. We have several responses from engineering firms addressed to you from the college files which indicate that you did contact them about preparing proposals.

In fact, at this time I would introduce in the record exhibit 10, which is a response to your RFP submitted to you by a firm called Transportation and Distribution Associates, Inc., from Philadelphia, PA.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Do you recall this proposal?

Mr. VAN ARSDALE. We did not issue an RFP that I can recall. I don't think anyone has been able to find one because I think people looked for it.

Mr. SYNAR. So these people just volunteered this—

Mr. VAN ARSDALE. No, the Department of Transportation of Pennsylvania notified some of these people that we were talking about relocating. One of these individuals called me, then we called three or four others. Whether it was this group, I don't recall, but we asked them what they would do if they were looking at this problem and this is a response to that request, but it was not an RFP.

Mr. SYNAR. All right. The proposal states that on page II-1 that the special interests of the college in the relocating of the railroad is "to pursue a master plan for development of their facilities which is not restricted by railroad operations and which incorporates student safety and campus beautification."

Mr. Van Arsdale, is that an accurate description of the college's goal at that time?

Mr. VAN ARSDALE. It seems reasonable and also to preserve the space which they didn't refer to.

Mr. SYNAR. All right.

Moreover, the proposal included sample conceptual layouts which note, one, the relocation of the railroad station and shop facilities; and, two, a discussion of the Y or the spur line.

Isn't it true, Mr. Van Arsdale, that Sloan Cornell's desire for the spur line interconnect with CSX was well known by you and the college at the time? In fact, isn't it true that Mr. Cornell first contacted the college about constructing the Y as far back as 1978?

Mr. VAN ARSDALE. Whatever that date is I referred to that in my opening comments, he was looking for both an east and west access, and we also looked for, as I said, at least 20 to 25 different locations in order to prevent that from happening, but we had to have a Y, even to the point of purchasing CSX from Hanover to the mountainside. It is in the agreements as you can see.

Mr. SYNAR. Isn't it true that Transportation and Distribution Associates sent you a letter on February 1988 including the route of an alternative alignment of the western spur which would have been entirely on college property in case negotiations with the park service over land exchange got bogged down?

Mr. VAN ARSDALE. Do you have that in here so I can see it? Where is that?

Mr. SYNAR. I would like to enter into the record exhibit 11.

Mr. VAN ARSDALE. This is from?

Mr. SYNAR. February 24, 1988. A letter from Transportation and Distribution Associates to you, Mr. Van Arsdale.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now we certainly recognize your goal to maximize the area of land available for future college development, but at the same time it was possible to put the relocated track and the western spur entirely on the college property and avoid cutting the ridge, wasn't it?

Mr. VAN ARSDALE. No, I don't think so. I think that drawing was taken and it was not found to be acceptable by either the Gettysburg railroad.

Mr. SYNAR. The reason it was found unacceptable is that the college would have had to fill in a portion of the lake in that area and run the rail line through the dugouts in the baseball field, isn't it?

Mr. VAN ARSDALE. We would have had to fill in a lake which brought us a whole environmental problem.

Mr. SYNAR. But that was the reason, correct?

Mr. VAN ARSDALE. We didn't want to fill in the lake.

Mr. SYNAR. So the college placed a higher priority on preserving the lake and its baseball field than preserving an historically significant feature of the battlefield; is that correct?

Mr. VAN ARSDALE. Not the baseball field. We were told early on that we would not have gotten approval to fill in the lake.

Mr. SYNAR. Where is the baseball field that you sought to preserve now located?

Mr. VAN ARSDALE. We weren't trying to preserve the baseball field. We always talked about moving the baseball field.

Mr. SYNAR. Where is it?

Mr. VAN ARSDALE. It has moved.

Mr. SYNAR. Where?

Mr. VAN ARSDALE. You can see it directly on the map.

Mr. SYNAR. On the 47 acres the college graded for the playing fields?

Mr. VAN ARSDALE. No, it is not on the 46 acres that the college graded for the playing fields. In fact, that was earlier on, years be-

fore that was the location of the baseball field. We moved it back to where it had been located many years before.

Mr. SYNAR. You never hired an engineering firm for thorough analysis to assist you with the railroad relocation project, correct?

Mr. VAN ARSDALE. As I said, the board of trustees turned the construction of that over to the Gettysburg railroad. We did not do the construction work on it.

Mr. SYNAR. Did you provide former park superintendent John Earnst and former park historian Bob Prosperi a map in December 1987 showing an area of land proposed to be exchanged for the park service to permit you to relocate the railroad?

Mr. VAN ARSDALE. If we sent them one, we sent them one. I sent lots of maps. A map that did not stay in the form it is today, it kept changing. We went through many, many iterations and so what they saw, if that was sent to them at that time would have been where we were at that point.

Mr. SYNAR. All right, at this time I would like you to look at exhibit 12, a map provided by Mr. Van Arsdale to the park service in December 1987.

[The exhibit can be found in the appendix.]

Mr. SYNAR. This map that you drew does not show where the rail lines actually will be laid down within the shaded area, does it?

Mr. VAN ARSDALE. I just see the shaded area.

Mr. SYNAR. You don't see any rails to be laid down. This map doesn't show the shaded area relative to the contour lines of Oak Ridge, does it?

So on the basis of this map, it is not immediately obvious how the railroad will actually affect the ridge, is it?

Mr. VAN ARSDALE. Definitely not.

Mr. SYNAR. But if you had taken the——

Mr. VAN ARSDALE. But it shows clearly the western spur, it shows clearly that there is a Y there.

Mr. SYNAR. There is no rail line there.

Mr. VAN ARSDALE. But it shows the land where it would be moved to.

Mr. SYNAR. But there is no rail line there, is there?

Mr. VAN ARSDALE. No, but it shows the land where the rail would be on.

Mr. SYNAR. But someone picking up the map wouldn't know that, would they?

Mr. VAN ARSDALE. Why would I cross-hatch it to say this is the land we would need to move?

Mr. SYNAR. I don't know. That is what we are trying to explore.

Mr. VAN ARSDALE. That is where the rail would have to be going.

Mr. SYNAR. If you had taken the trouble to have the map prepared with contour lines, then anyone reviewing it at least might have recognized exactly what was being proposed, isn't that right?

Mr. VAN ARSDALE. This was early on. You said this is 1987?

Mr. SYNAR. You knew there was a western spur, did you not?

Mr. VAN ARSDALE. We were hoping to avoid it.

Mr. SYNAR. Did you fully understand at the time that constructing the western spur line for Sloan Cornell would necessitate cutting off part of the ridge?

Mr. VAN ARSDALE. The railroad did the construction work.

Mr. SYNAR. That is not the question, Mr. Van Arsdale. Did you fully understand at the time that constructing that western spur line for Sloan Cornell would necessitate cutting off a good part of the ridge?

Mr. VAN ARSDALE. In looking at those maps and looking at the contour and having walked the area, I lived right in that area, I went there virtually every day, walked that area.

Mr. SYNAR. At that time did you or did you not fully understand in 1987 that constructing—

Mr. VAN ARSDALE. 1987, no.

Mr. SYNAR. All right. So if you didn't fully appreciate the significance of the construction and what would happen, how on earth could anyone else be expected to recognize it?

Mr. VAN ARSDALE. That is 1987. Things kept changing.

Mr. SYNAR. The point is that you said they should have known by your drawing but you just admitted that you didn't know that that is where it was going to go, and yet you said we should have known, but then you say you didn't know.

Mr. VAN ARSDALE. In 1987 that is where it was looking. You can see the whole iteration of all the maps that came out after that.

Mr. SYNAR. All right. When did you fully understand where the western spur was going to be? And that it would necessitate chopping off of the ridge?

Mr. VAN ARSDALE. When we had the drawings that showed, the topography that showed—

Mr. SYNAR. When?

Mr. VAN ARSDALE. Whatever the date is on the drawing, sir.

Mr. SYNAR. 1988?

Mr. VAN ARSDALE. No, we didn't have topography drawings in 1988, did we?

Mr. SYNAR. 1989?

Mr. VAN ARSDALE. March 1989 were I think the first drawings we had with any kind of topos on them.

Mr. SYNAR. That is after the boundary study, isn't it?

Mr. VAN ARSDALE. What were the dates of the boundary study, 1988?

Mr. SYNAR. Yes.

Mr. VAN ARSDALE. Whatever was shown, you have the maps. I don't have access to those maps.

Mr. SYNAR. In April 1988, didn't Gettysburg College and Sloan Cornell of the railroad enter into a nonbinding agreement with the plans to relocate the railroad?

Mr. VAN ARSDALE. Was there a letter agreement there? Do you have it in there?

Mr. SYNAR. I do. Let me enter into the record exhibit No. 13, a copy of your April 19, 1988, agreement.

[The exhibit can be found in the appendix.]

Mr. VAN ARSDALE. OK. What does it say?

Mr. SYNAR. Mr. Van Arsdale, doesn't this letter memorialize the fact that the college and Mr. Cornell had come into an initial agreement that there would be, one, both a Y interconnect and a railroad maintenance building constructed in the vicinity of home plate at the college's existing baseball diamond at the western end of the

campus, and, two, that efforts would be made to obtain certain property from the park service to facilitate this relocation?

Mr. VAN ARSDALE. That is what it says, and our drawing in April 1988 would have shown that.

Mr. SYNAR. Aren't the Y and the railroad maintenance building located almost exactly where this letter stated they would be?

Mr. VAN ARSDALE. I haven't read it all, but that is what it is indicating.

Mr. SYNAR. The subcommittee staff spoke to Mr. Cornell, and he said that the location of the western spur and the railroad maintenance building are exactly where the April 19, 1988, agreement said they would be.

Now, Mr. Cornell's desire for the Y interconnection with the CSX Transportation was at the heart of the deal, wasn't it?

Mr. VAN ARSDALE. Start from the beginning. Western access. If we had to go to a Y to get that, so your April 1988 map would show that on it, does it not? Again, you people have the information, and I don't.

Mr. SYNAR. If this Y was absolutely necessary for the efficient and effective operations of Mr. Cornell's business, why was it that in September 1990, after meetings with CSX Transportation, Mr. Cornell decided not to pursue a physical interconnection with CSX?

Mr. VAN ARSDALE. You have the answer from Mr. Cornell. I don't know what his reason would be for that.

Mr. SYNAR. Well, didn't you tell us in your interviews with the subcommittee that the CSX insisted that their people do the work and were going to charge an exorbitant rate to do the work?

Mr. VAN ARSDALE. There was one of those discussions with them that I was present at, yes.

Mr. SYNAR. Did you not tell the subcommittee that when we asked you that?

Mr. VAN ARSDALE. If he said that, yes.

Mr. SYNAR. The subcommittee staff spoke to CSX and they said they had developed an estimate of \$75,000 to \$90,000 to do this work. Wasn't the college prepared to lend Mr. Cornell over \$1 million to purchase some of the CSX Transportation system outside of Gettysburg?

Mr. VAN ARSDALE. The agreement called for a loan up to \$1 million to purchase the entire line which would have then obviated—that would have given him his western access, put the whole engine house at the eastern spur of the CSX line.

Mr. SYNAR. Well, if the college was prepared to lend him \$1 million, Mr. Van Arsdale, and this was the heart of the deal, wouldn't you have lent him \$90,000 to get the interconnection he wanted for his operations?

Mr. VAN ARSDALE. Not for just \$90,000. We were talking about a possible \$1 million. It does say in the agreement only for the purchase of the whole CSX line that ran from Hanover to up over the mountain.

Mr. SYNAR. Dr. Haaland, isn't it true that to date, almost 3 years after the construction was completed and the rail service began on the main relocated railroad, that the western spur is still not interconnected with the CSX Transportation?

Dr. HAALAND. That is correct.

Mr. SYNAR. Now, on May 3, 1988, did the college and Mr. Cornell update their agreements to "acquire and convey to the railroad a 50-foot right-of-way extending from the railroad line to be retained by the railroad to the connection to be made with CSX near the stadium, including land for the Y near the connection"?

Dr. HAALAND. I believe that is correct.

Mr. SYNAR. At this time I would like to introduce into the record exhibit 14, the May 3, 1988, letter from the college to Sloan Cornell.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, you advised the subcommittee that Mr. J. Riley Redding performed survey work for the college during the time all this was going on.

Mr. Van Arsdale, didn't you contract with Mr. Redding to develop survey plats showing where the western spur and railroad maintenance building would be located?

Mr. VAN ARSDALE. We did.

Mr. SYNAR. Let me introduce in the record at this time exhibit 15, a survey plat prepared by Mr. Redding.

[The exhibit can be found in the appendix.]

Mr. SYNAR. What is the date on that plat, Mr. Van Arsdale?

Mr. VAN ARSDALE. May 23, 1988.

Mr. SYNAR. This May 1988 survey plat shows the western spur located on the park land you hoped to acquire, so as early as May 1988 not only were you thinking about relocating the western spur to the western edge of the campus, but you were actually making plans to put it on the land what you wanted from the park, correct?

Mr. VAN ARSDALE. That is what the date has, yes. Whatever those dates are, that is where we were in the negotiations.

Mr. SYNAR. Just a second. We are going to put something up here. Doesn't that map clearly show that the western spur to the western edge, that you were going to move the spur right through the park?

Mr. VAN ARSDALE. That is what it shows, yes.

Mr. SYNAR. At that point did you understand that a good portion of the ridge was going to be destroyed?

Mr. VAN ARSDALE. Having walked the ridge and seeing what was going on, certainly.

Mr. SYNAR. So this was five—

Mr. VAN ARSDALE. Those tracks come along there—

Mr. SYNAR. Mr. Van Arsdale, that is May 23, 1988, before the boundary study.

Mr. VAN ARSDALE. If that was the map that was drawn and we had it then, that is the map that was used and shown to people.

Mr. SYNAR. Did you at any time show that to the park service during the boundary study?

Mr. VAN ARSDALE. If that was the map I had whenever I met with anybody, that was the current map, that is the map that was shown.

Mr. SYNAR. Now the draft—

Mr. VAN ARSDALE. Or similar to that.

Mr. SYNAR. Now the draft boundary study and environmental study was issued in August 1988 and the boundary study described the relocation project as follows: "A possible rerouting of 3,600 feet

of the Gettysburg Railroad lines from its current location on the Gettysburg College campus to one along the Park-College boundary would require minor park boundary alteration."

It goes on to state, "Objective: Provide for rerouting of Gettysburg Railroad tracks along current park boundary." In other words, along the easternmost area of the track proposed be to given by the college.

Does this fully describe the proposed railroad relocation plans that the engineering firms had studied in September 1987?

Mr. VAN ARSDALE. No, that is—this is not the engineering plans that were done in 1987.

Mr. SYNAR. Or this 1988?

Mr. VAN ARSDALE. It wasn't 1987. If that is dated 1988—

Mr. SYNAR. So the boundary statement does not clearly, by that statement, take this into account?

Mr. VAN ARSDALE. Whatever map we had, whatever time was shared with the people.

Mr. SYNAR. This is not hard. That statement I just read to you does not take into account that map that was previous to the boundary study, does it not?

Mr. VAN ARSDALE. I believe that map was available to the park service. If that was the way they wrote their boundary study based on the map, that is the way they wrote it.

Mr. SYNAR. Were you at the boundary study meeting?

Mr. VAN ARSDALE. I was at a number of them.

Mr. SYNAR. Were you at that one? Did you read the boundary study?

Mr. VAN ARSDALE. Eventually, yes.

Mr. SYNAR. When you read the boundary study, did you read the particular part on the railroad spur?

Mr. VAN ARSDALE. Yes.

Mr. SYNAR. Did you find the boundary study accurate compared to what this picture described?

Mr. VAN ARSDALE. At the time I did, yes. Yes.

Read it again, please.

Mr. SYNAR. So it is not consistent with the boundary study, is it?

Mr. VAN ARSDALE. It is. Why isn't it?

Read it again, please.

Mr. SYNAR. Let me—what I am trying to get to, does the description from the boundary study fully describe the agreements that you and the college made with Sloan Cornell in April 1988? Does it fully describe that?

Mr. VAN ARSDALE. What doesn't it describe?

Mr. SYNAR. Where the western spur is, what we have just been going through, Mr. Van Arsdale.

Mr. VAN ARSDALE. It talks about a minor alteration of the park service boundary.

Mr. SYNAR. You consider that a minor alteration, cutting off the ridge like that?

Mr. VAN ARSDALE. Yes; 7.4 acres or whatever out—

Mr. SYNAR. Mr. Van Arsdale, let me read it to you again. "A possible rerouting of 3,600 feet of Gettysburg rail line from its current location on the Gettysburg College campus to one along the park-college boundary would require minor park boundary alteration." It

goes on to state, "Provide for rerouting of the Gettysburg Railroad tracks along current park boundary"—current.

Mr. VAN ARSDALE. And that's correct. There is very little park land that is used where the track is.

Mr. SYNAR. Was there a western spur at the time, Mr. Van Arsdale?

Mr. VAN ARSDALE. Sure. If that's the date of the map and the map of 1988 is available, sure.

Mr. SYNAR. Was there a western spur on the current boundary at that time?

Mr. VAN ARSDALE. On the current boundary?

Mr. SYNAR. At that time when that letter was written on the boundary survey.

Mr. VAN ARSDALE. On the current boundary survey that was produced? I would have to see that, I don't—

Mr. SYNAR. Just a second. I am going to ask staff to ask you this, since they interviewed you.

Mr. McLAUGHLIN. Mr. Van Arsdale, the boundary study says that the current railroad would be relocated along the current park-college boundary, does it not?

Mr. VAN ARSDALE. You just read it.

Mr. McLAUGHLIN. OK. Was there a western spur that existed at the time of the boundary study?

Mr. VAN ARSDALE. Those are the dates.

Mr. McLAUGHLIN. Those maps are proposed plans, your intentions. My question to you is this: Was there a western spur that existed at the time of the boundary study?

Mr. VAN ARSDALE. Is there a map in the boundary study?

Mr. McLAUGHLIN. Mr. Van Arsdale, this is a simple question. The rail line that ran across your campus in 1988, did it have a western spur?

Mr. VAN ARSDALE. You will have to show me the study.

Mr. SYNAR. Yes or no, Mr. Van Arsdale.

Mr. VAN ARSDALE. I don't remember. I really don't remember. You would have to show me the drawing.

Mr. McLAUGHLIN. Mr. Walker, at the time of the boundary study in 1988, did a rail line going through the campus include a western spur?

Mr. WALKER. Are you asking me about the map or the railroad that existed?

Mr. McLAUGHLIN. I am asking you at the time, in 1988, was there a western spur on Mr. Cornell's rail interconnecting with CSX?

Mr. WALKER. There wasn't in the railroad.

Mr. McLAUGHLIN. Thank you, sir.

Mr. Van Arsdale, the boundary study said current railroad. As Mr. Walker attested, there was not a western spur that existed on the college campus in 1988, was there?

Mr. VAN ARSDALE. Now that I understand your question, no, there wasn't a western spur. There was just one spur—there were several spurs through the campus.

Mr. McLAUGHLIN. But in fact there was not a western spur?

Mr. VAN ARSDALE. But there were several spurs. There were four or five sets of track through the campus.

Mr. McLAUGHLIN. OK. Thank you.

Back to the May 23, 1988, survey plat that is now on the board. These were the college's plans to develop a western spur; is that correct?

Mr. VAN ARSDALE. That's the plan right there, yes.

Mr. McLAUGHLIN. And this plan shows a western spur cutting through Oak Ridge, does it not?

Mr. VAN ARSDALE. There it is, yes.

Mr. McLAUGHLIN. However, in the boundary study that was issued in August 1988, there is no reference to a western spur or the fact that Oak Ridge would be excavated, is there?

Mr. VAN ARSDALE. I didn't write it, so—

Mr. SYNAR. Did you ever provide any more detailed information—the engineering studies, the signed agreement with Sloan Cornell, or the May 1988 survey plat—to anyone from the National Park Service prior to the conclusion of the boundary study?

Mr. VAN ARSDALE. Whatever we were asked to provide—whatever we were asked to provide by the National Park Service, they received the materials to the best that we could provide them.

Mr. SYNAR. Who in the park service did you provide information to on the proposed railroad construction?

Mr. VAN ARSDALE. Mostly people at the mid-Atlantic division. We were told by the local people that in mid-Atlantic exchanges they are the ones we deal with and they are the ones we dealt with.

Mr. SYNAR. Didn't you provide that information to Jonathan Doherty, the park service project leader for the boundary study?

Mr. VAN ARSDALE. He was part of the mid-Atlantic group, yes.

Mr. SYNAR. Now, the subcommittee staff has extensively interviewed Mr. Doherty, who is primarily responsible for the boundary study. He told us that he authored the boundary study and wrote the section dealing with the land deletion along the park-college boundary. Moreover, he said that it is likely that he got this information from you.

Did you attend the September 14, 1988, public hearing on the boundary study during which questions were raised on the proposed relocation of the track?

Mr. VAN ARSDALE. All the meetings that I attended, I don't recall anyone asking a question about the relocation.

Mr. SYNAR. Let's get it simple here. Were you at the September 14 meeting?

Mr. VAN ARSDALE. I don't remember—I attended many meetings. I don't know the dates of the meetings that I attended.

Mr. SYNAR. Did anyone else from the college attend those meetings?

Mr. VAN ARSDALE. Not that I am aware of, but they might have.

Mr. SYNAR. All right. In an interview with the subcommittee staff, you indicated that you recalled attending a meeting of the Gettysburg Planning Commission in February 1989. That is after completion of the boundary study. Is that your testimony here today?

Mr. VAN ARSDALE. Say that again.

Mr. SYNAR. That you went to a meeting of the Gettysburg Planning Commission in February 1989 which was after the completion of boundary study; is that your testimony?

Mr. VAN ARSDALE. Whatever this letter, whatever the date of that planning commission where I showed up, I think Mr. Frassanito referred to it as courtesy or walked in.

Mr. SYNAR. You heard his testimony earlier in which he stated you used a map to brief the commission on the proposed railroad relocation project, but that briefing and the map did not show a western spur or a railroad maintenance building in the parcel on the park land; and we have already discussed the fact that you had the information at the time as the dates on these things indicate.

Why wasn't that provided to the planning commission members at that meeting?

Mr. VAN ARSDALE. That wasn't just to discuss the railroad. If you read—may I read from the letter?

Mr. SYNAR. I want to know why you didn't provide that information to the planning commission members.

Mr. VAN ARSDALE. The college has provided me with one of the maps that would have been used during that time, and it shows very clearly the part of the property that we would have been looking at. It does not show any of the details. It was one of those where I talked about all the different plans that we were talking about or entertaining with just highlights and just not even the graphic locations of various buildings that I spoke about that evening.

The only reason I even spoke that evening was that there wasn't a quorum and there wasn't going to be a meeting there, so we just informally discussed and this note even says that.

Mr. SYNAR. But you—

Mr. VAN ARSDALE. His thoughts and ideas on proposed changes in the planned facilities of the college.

Mr. SYNAR. You selectively chose the information you provided to the commission.

Mr. VAN ARSDALE. I did not selectively chose.

Mr. SYNAR. You didn't provide the information that you had available.

Mr. VAN ARSDALE. I provided information on the map that I had there. I was totally unprepared; it was not a scheduled presentation and it was an off-the-cuff presentation.

Mr. SYNAR. Did you view the borough planning commission and the historic and architectural review board as being unreasonable with respect to the college's goals for development?

Mr. VAN ARSDALE. I said they held us to higher standards, as you and Dr. Haaland talked about, yes.

Mr. SYNAR. Mr. Van Arsdale, when did you first provide the park service with the survey plat showing the western spur?

Mr. VAN ARSDALE. Whatever dates you have on those maps. I don't remember the specific dates.

Mr. SYNAR. At this time I would like to introduce in the record exhibit 16, the March 14, 1989, survey plat, if you will look at that. [The exhibit can be found in the appendix.]

Mr. SYNAR. Did you provide this map?

Mr. VAN ARSDALE. In all probability, yes. I don't know for a fact that I provided that.

Mr. SYNAR. Who did you provide it to?

Mr. VAN ARSDALE. Whoever had asked for it we would have provided it to.

Mr. SYNAR. Gerald Kirwan and Bob Davidson?

Mr. VAN ARSDALE. As I said, whoever would have requested it, we would have provided it.

Mr. SYNAR. Was Carol Fox, former Superintendent Dan Kuehn's secretary, also at the meeting during which you provided them this particular survey plat?

Mr. VAN ARSDALE. I don't remember providing them the map at a meeting.

Mr. SYNAR. The subcommittee interviewed Ms. Fox, and she said she did participate in that meeting with you.

How many copies of the map did you provide them?

Mr. VAN ARSDALE. I have no idea.

Mr. SYNAR. Our record shows one.

Why didn't this map show the location of the proposed railroad maintenance building?

Mr. VAN ARSDALE. There is no reason for it to show it or not to show it. Whatever we were asked to show, we were showing.

Mr. SYNAR. Do you think it was fair in your capacity as one to try to provide complete information to the park service that you withheld information that might make their decisions clearer and better?

Mr. VAN ARSDALE. We never withheld any information that we were requested so——

Mr. SYNAR. So you don't——

Mr. VAN ARSDALE. Excuse me, sir. May I finish?

Mr. SYNAR. Yes.

Mr. VAN ARSDALE. We were told—that was again a view that we were showing the local people whenever there was a request, wherever we were with the mid-Atlantic folks.

Mr. SYNAR. OK. Oak Ridge rises to a height of 30 feet at its peak but this map only shows two contour lines. Why?

Mr. VAN ARSDALE. Because that's all that Riley Redding must have put in on the map.

Mr. SYNAR. Profile lines are typically used on survey plats to show how a proposed construction activity will affect the contour of the land within a project area. The early survey plat dated December 28, 1988, which you did not provide to the park service, includes a profile line showing how the ridge would have been cut to allow the construction of a western spur.

However, the later maps you provided the park do not. Can you explain that one for us?

Mr. VAN ARSDALE. I wouldn't have been able to explain it before, but the college has a letter from Riley Redding explaining it; and I think that if you would lay the two maps over each other you would see how the tracks have changed substantially. And the last thing that—according to the information the college has, the last thing he adds to the map are the contour sections, so if there is any change in those, that you would have to discuss with Mr. Riley. And I think you already have in your records the details of that discussion.

Mr. SYNAR. At this time, I would like to introduce into the record exhibit 17, which is the December 28, 1988, survey plat that we just mentioned.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Mr. Van Arsdale, if you look at this earlier survey plat, you note that it does show contour lines at every 2 feet and a profile view of the proposed rail line; isn't that right?

Mr. VAN ARSDALE. I just see the contours on this map, yes.

Mr. SYNAR. Isn't this information that the park service required you to provide well after you began excavation of the railroad relocation in 1991?

Mr. VAN ARSDALE. This map has changed, and I think you have the maps here that we could lay, if you wanted to impose them over each other, to show that those changes that were made required a change in the map; and that's why Riley supposedly didn't put in those contours.

Mr. SYNAR. Isn't it true that Mr. Redding did exactly as you told him to do?

Mr. VAN ARSDALE. Mr. Redding did the things that we were told that we needed to get for the park service.

Mr. SYNAR. So did he do exactly what you told him?

Mr. VAN ARSDALE. He did exactly what we were required to do and were referred to by the park service.

Mr. SYNAR. All right. The park service did not require that you provide this level of detail prior to the land exchange, did they?

Mr. VAN ARSDALE. I don't recall that.

Mr. SYNAR. And you didn't give it to them voluntarily even though you had it, did you?

Mr. VAN ARSDALE. Whatever they asked for, they received.

Mr. SYNAR. Do you recall a 1991 survey plat that Mr. Redding developed for a proposed running trail on the water runoff system that you designed, that you proposed to build on the 46 acres of land on which the college had given the park service scenic easement rights?

Mr. VAN ARSDALE. We had proposed to put along—the other map is gone.

Mr. SYNAR. That one right there.

Mr. VAN ARSDALE. We had a walkway along there already. We proposed to make it safer to get our students who would not follow directions and get off the road and jog—they were jogging on the road two and three and four abreast. We tried to develop that road in a better fashion in order to get them off that road.

Mr. SYNAR. This survey plat, I won't put it into the record, but I would like to draw your attention to it which was prepared in February 1991. As you can see from this map, which was prepared for the Pennsylvania Department of Transportation, it has quite an amount of great detail, more than the railroad relocation survey plat, doesn't it?

Mr. VAN ARSDALE. It was required. That was required by the—the environmental people, and we met exactly what—

Mr. SYNAR. It seems to us that Mr. Redding is capable of preparing very detailed survey plats when he needs to and he has been asked to do it, isn't he?

Mr. VAN ARSDALE. When it is required.

Mr. SYNAR. Why did the survey plat of the proposed running trail that you provided the Pennsylvania Department of Transportation have that much more detail? Did you request that much more detail?

Mr. VAN ARSDALE. No, he must have found that out from them what their requirements were.

Mr. SYNAR. Now, former Gettysburg Park Superintendent Kuehn has stated publicly that on three separate occasions in 1989 he requested that you provide him with survey plats, but that each time you failed to do so. Why didn't you honor those requests?

Mr. VAN ARSDALE. I don't remember those requests. I have heard that before from Mr. McLaughlin.

Mr. SYNAR. Mr. Van Arsdale, you testified before the Pennsylvania Public Utilities Commission concerning the application of Gettysburg Railroad for a find of public convenience and necessity. That proceeding related to the siting of the railroad maintenance building.

Now, in that testimony, you described 7.5 acres of land acquired from the park service as, "nondescript." What did that mean in your statement, "nondescript"?

Mr. VAN ARSDALE. From what I was told and from the archaeological studies, that there was nothing of major significance in the area. That's what the others had told us.

Mr. SYNAR. That description of the land obviously doesn't square with the opinions of the historians we have had here this morning, does it?

Mr. VAN ARSDALE. It does not.

Mr. SYNAR. Now, the State historic commission has requested that an archaeological study be done prior to the deletion of the tract of land along the park-college boundary, Dr. Goodwin.

Dr. GOODWIN. Yes, sir.

Mr. SYNAR. You heard the testimony from Kurt Carr, the archaeologist from the historic commission, that the phase I archaeological survey is performed to determine whether there are any unknown archaeological resources on that tract of land that have to be developed; and it is not the sole or necessarily primary deterrent to the tract of land's historical significance.

Do you agree with that assessment?

Dr. GOODWIN. Yes, I do, sir.

Mr. SYNAR. Isn't other information, such as a historic resource study and cultural resource study necessary to make that determination?

Dr. GOODWIN. In general it is, sir.

Mr. SYNAR. Your firm was on the list of archaeological firms provided by the park service, and you were selected by the college to perform the phase I survey. Who developed the scope of the work for that archaeological study?

Dr. GOODWIN. The mid-Atlantic region of the National Park Service.

Mr. SYNAR. All right. At this time, I would like to introduce to the record exhibit 18, the scope of work developed by the park service for this survey.

[The exhibit can be found in the appendix.]

Mr. SYNAR. The scope of work requested that you make an estimation of the property's archaeological significance and make recommendations for further actions, didn't it?

Dr. GOODWIN. That's correct, sir.

Mr. SYNAR. In short, wasn't the park service seeking your recommendations on whether there should be a phase II of the survey?

Dr. GOODWIN. That is correct.

Mr. SYNAR. Now, on August 6, 1990, you submitted a 2½ page executive summary of findings of your field test to Mr. Van Arsdale. Now this summary letter mentions a rail line, a spur line, sidings, and a maintenance building, but I would note for the record that this paper was not made public prior to the exchange being executed.

On August 6, 1990, the summary report concluded, "Because there will be no impact to significant archaeological resources, no additional work is recommended."

Now, on October 25, 1990, almost 1 month after the land exchange had been executed, you submitted to Mr. Van Arsdale the actual 42-page draft report with appendices. At this point, I would note that, to our knowledge, this version was not made public prior to the construction starting either.

Now, notably, the wording of the October draft report findings changed a bit to read, "the proposed railroad and building construction will impact no significant cultural or historic resources."

Now, how come your conclusion is suddenly expanded, Mr. Goodwin, to include a finding about historical resource significance?

Dr. GOODWIN. Congressman, the 42-page report is longer than the 2½ page report. It must necessarily be expanded, by definition. The substantive findings of the executive summary letter and the draft and final technical report did not vary. You know—obviously, the wording is a little bit different because one is longer than the other, but the substantive findings did not change.

Mr. SYNAR. But wouldn't a regular person, someone who doesn't understand all this, conclude that the site had no historical significance?

Dr. GOODWIN. I did not write to the historical significance in my report, Congressman. I limited my study to the scope of work that was prepared by the National Park Service that dealt specifically with archaeological resources. There was not an archaeological site on the property and I did not speak to the historicity of the property.

Mr. SYNAR. Was your phase I archaeological study, in fact, intended to address the issue of historical significance?

Dr. GOODWIN. No, it was not. It was intended to inventory archaeological properties only.

Mr. SYNAR. But, in fact, haven't the college and the park service both used your survey to assert that the 7.5-acre tract was not historically significant on the basis that the only one unfired minieball was recovered?

Dr. GOODWIN. Congressman, I can't be responsible for how other people would use that work. I would just say that, from my standpoint, the report stands on its own merits and is accurate insofar as it goes.

Mr. SYNAR. I would like to introduce into the record exhibits 19 and 20.

Exhibit 19, if you will look in the book, is a letter from the park service to the Pennsylvania attorney who had written to the National Park Service concerned about the railroad cut construction. This letter notes that the archaeological study concluded that the 7 acres was not historically significant.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, exhibit 20, the so-called white paper prepared by Mr. Walker for the college faculty, administrators, and staff, also makes the same point: That based on the archaeological study and survey, the tract had no historical significance.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, Mr. Walker, let's take this opportunity to review that white paper. The white paper is dated February 1, 1991, so it was written not long after the construction and the controversy started.

First, this paper asserts that, "there is no record of fighting on the portion of Oak Ridge in question."

Now, given the expertise of the historians you have heard today, either you still stick to your statement that there is no record of fighting on that portion of Oak Ridge or you don't. Which one is it?

Mr. WALKER. I think that it was at the point that we wrote that I stick with that, yes. It was written in February—

Mr. SYNAR. What do you say today?

Mr. WALKER. There has certainly been some conflicting evidence presented, but we had to move on the evidence that we had at that point.

Mr. SYNAR. So you dispute Mr. Brown's testimony?

Mr. WALKER. No. What I said is that there has been conflicting evidence presented today, but we had to move with the evidence that we had at the time in 1990 and 1991.

Mr. SYNAR. The white paper also states that if the western portion of campus had not been, "made available for safe and convenient uses, the only alternative for new building or activities would have been an area verging on the site of the first day's battle on the north side of the Borough."

Now, with regard to your point that the northwestern area of the campus would have been developed had the railroad tracks not been relocated, isn't that contradicted by a letter from Dr. Glassick to Dr. Powell which we put into the record earlier?

Mr. WALKER. It certainly seems to be, but I have always thought and I have heard it discussed in board meetings that that would have been the area that would have been developed.

Mr. SYNAR. By the way, isn't it true that about 5 months after the land exchange with the park service, the college proposed to put in a rubberized running trail and a high tensile fence for the 46 acres over which the park service has an easement, but the park rejected the proposal as violating the terms of the scenic agreement?

Mr. WALKER. I don't know about that.

Mr. SYNAR. Mr. Walker, your white paper also notes that the college agreed to provide a screen of trees to hide the rail equipment.

Oddly, though, it fails to mention that the college violated the provisions of the deed by removing all the existing stand of trees.

Why didn't you mention that in your white paper?

Mr. WALKER. All of them weren't removed. Some of them were removed by the grading, but all of them weren't removed; there are many that are north of the lake, Mr. Synar, and you can see it in the photograph we had up earlier.

Mr. SYNAR. Were the trees that were required under the deed to be left, left or not?

Mr. WALKER. There were some that were cut down, that's correct, graded down.

Mr. SYNAR. Well, I am going to tell you I was up there the day the fraternities and sororities were beginning furiously to plant trees in the rain, for whatever timing reason I have no idea, and there wasn't an old tree standing.

Mr. WALKER. Did you—I saw you that day because I was out planting trees in the rain. And I should tell you voluntarily—I should say and I should tell you, had you walked back north of the lake, you would have seen a lot of trees that were left standing.

Mr. SYNAR. Mr. Walker, you then go on to note that the college officials attended four of the five boundary study meetings and that, you say, no questions were asked about the plans to relocate the railroad.

However, once again, you fail to mention a key fact. And that is on the last public meeting on September 14, 1988, which college officials apparently did not attend, the questions were in fact raised about the relocation of the railroad. And the questioners were told by Jonathan Doherty of the park service that the relocated railroad was going to be, "at the base of Oak Ridge."

Why didn't you mention that?

Mr. WALKER. I didn't know about it at that time.

Mr. SYNAR. All right. Now my personal favorite. You asserted in your white paper that the Gettysburg rail line was a "critical link" to the Nation's rail system and often carries military freight.

That isn't true, is it?

Mr. WALKER. Mr. Van Arsdale can tell you about this a bit more fully, but it is my understanding that it is a link in the defense system and it is the only link that is available for military freight to come through without going through a tunnel.

Mr. SYNAR. Well, we hate to leave loose ends here, so we asked about it. We called the Senior Civil Engineer, Railroads for National Defense at the Department of Army, Military Traffic Management Command. He is the guy who knows this stuff. We have a letter from him which I will include in the record as exhibit 33, and it is in your book.

[The exhibit can be found in the appendix.]

Mr. SYNAR. The letter states that the rail lines in the vicinity of historic Gettysburg battlefield are not designated important to national defense. In fact, he states that the nearest designated defense line is some 25 miles northwest of Gettysburg.

Mr. VAN ARSDALE. That is not what was related to us by the Department of Transportation because in 1985 and 1986, in my own naive manner, I went to them to just purchase the railroad and close it. I was told that it couldn't be done because it had high im-

portance—this is from the Pennsylvania Department of Transportation—it had high importance on a military and security basis, and that many large shipments come down through that line because they don't have to navigate tunnels or go under passes.

And we have seen since I lived there in 1985 many—well, not many, on occasion where there were some large loads that were brought down there.

Mr. SYNAR. Mr. Walker, in face of the mounting criticism over the railroad cut, didn't you hatch the idea to have Dr. Goodwin here attend the Civil War Institute in 1991 in order to counter the arguments of the preservationists who were upset about the cut?

Mr. WALKER. In each case we tried to meet with people and provide them full evidence and full disclosure. We stood for questions after that meeting, and I think Chris will tell you that that is the case.

Mr. SYNAR. Did you or did you not hatch the idea that Dr. Goodwin was to attend the Civil War Institute?

Mr. WALKER. We invited Dr. Goodwin to attend.

Mr. SYNAR. Did you—Dr. Goodwin, did you participate in the Civil War Institute in 1991 at the request of the college to discuss the archaeological study?

Dr. GOODWIN. Yes, sir, I did.

Mr. SYNAR. Well, as you undoubtedly know, the argument wasn't so much over the archaeological but over the historical significance and you have already told us, I think, that in your October 1990 reports you intended to be a—it was not intended to be, "something to hang your hat on for historical significance."

So why did you allow yourself, Dr. Goodwin to be used to justify the argument that the 7.5 acres was not historically significant?

Dr. GOODWIN. I don't think that's the point of my attending that conference at all, Congressman.

Mr. SYNAR. What was your purpose?

Dr. GOODWIN. Mr. Walker asked me to attend as a favor to address the presence or absence of archaeological resources. And you know, I spoke to that issue and answered questions.

Mr. SYNAR. Did the park service specifically seek your assessment as to whether the proposed western spur, siding, and railroad maintenance building would detract from the ability of the park service to interpret the events of the battle?

Dr. GOODWIN. The scope of work was specific with reference to where we excavated, our shovel tests and what we were to do. They provided a list of shovel tests that were to be excavated in the railroad track right-of-way along the spur, and the map of the results of those shovel tests is in our report.

Mr. SYNAR. Did they ask you if it would detract?

Dr. GOODWIN. Yes, if it would detract from interpretation of any archaeological resources, Congressman, but there were no archaeological resources there.

Mr. SYNAR. But not historical?

Dr. GOODWIN. That is a different issue entirely, Congressman. Archaeology is an empirical science; you have to have artifacts in order to have archaeology.

Mr. SYNAR. Why did you write such an opinion in August 6, 1990, in the report?

Dr. GOODWIN. I'm sorry, Congressman?

Mr. SYNAR. Why did you write such an opinion in your August 6, 1990, report?

Dr. GOODWIN. I don't know what you are talking about, Congressman. What opinion?

Mr. SYNAR. As an archaeologist hired to determine whether there are any archaeological resources beneath the surface, are you even in a position to make a determination as to whether the construction and the presence of new buildings and rail lines on the surface would detract from the park service's ability to interpret the battle?

Dr. GOODWIN. To interpret the archaeology only, Congressman, that's all.

Mr. SYNAR. But not the historic?

Dr. GOODWIN. No, sir, the archaeology.

Mr. SYNAR. Again, I want to remind you that your opinion stated historic value, too. It did not just say archaeological. You are familiar with that, I read you that part of your report.

Dr. GOODWIN. Could you do me the honor of reading it again, Congressman?

Mr. SYNAR. Read it. Historic.

Dr. GOODWIN. This is in which exhibit, sir?

Mr. SYNAR. We will come back to that in just a second.

Dr. GOODWIN. Yes, sir.

Mr. SYNAR. All right.

Let me ask you this: Isn't the determination of the historic value and whether or not it detracts from the park's ability to interpret solely a responsibility of the park service?

Dr. GOODWIN. Yes, sir.

Mr. SYNAR. Did the park service's scope of work specify that you were to conduct a shovel test at an interval of every 50 feet along the center line of the proposed western spur in the area of the proposed railroad maintenance building?

Dr. GOODWIN. Yes, sir.

Mr. SYNAR. Did the regional archaeologist of the park service provide you with a map showing where the center line of the western spur and railroad maintenance building would be located?

Dr. GOODWIN. There was a map attached to the scope of work. I don't specifically recall whether or not it showed the details of the western spur.

Mr. SYNAR. Where did you get that map so that you could do those shovel tests in the right location?

Dr. GOODWIN. We received two maps, sir. One was from the National Park Service mid-Atlantic region, it came with the scope of work. And the second one we obtained from Mr. Van Arsdale at Gettysburg College before we initiated the work. That map is duplicated in my report.

Mr. SYNAR. Now, the one that you received from Mr. Van Arsdale showed the spur line, did it not?

Dr. GOODWIN. Yes, sir.

Mr. SYNAR. Was any park service official present to supervise your staff when they actually performed the survey tests?

Dr. GOODWIN. No, sir.

Mr. SYNAR. Dr. Haaland and Mr. Walker, in various documents and statements, including your prepared statement for this hear-

ing, you have repeatedly said that the park service supervised the archaeological survey work, clearly implying that someone from the park service was there, the secondary implication being that if you were on the ground, they must have known exactly what was going where. But no park service was there.

Why then, based upon what you have just heard from Mr. Goodwin, can you continue to repeat such a statement that you had supervision at all times?

Dr. HAALAND. The responsibility for supervision was the National Park Service.

Mr. SYNAR. But the responsibility for you saying in a statement that you were constantly supervised is your statement. And, in fact, you were not constantly supervised, were you?

Dr. HAALAND. We—we were not conducting the work. That was being done by the archaeologist.

Mr. SYNAR. Clearly, Dr. Haaland, you have said throughout your testimony that you were supervised and that because of that supervision, the park service should have known about everything that was going on.

Now, Dr. Goodwin has just told you that on one of the critical parts of that, "supervision" there were no park service people there. So how can you continue to testify that you were supervised at all times?

Dr. HAALAND. We were not saying, sir, that we were supervised. We have said an archaeology firm was suggested, approved and supervised by the National Park Service.

Mr. SYNAR. Dr. Goodwin has just testified under oath that that indeed did not happen.

Dr. HAALAND. I think your interpretation—one can be supervised without having the physical presence each time if one, in fact, pursues the issue of what work is being done, making sure that it is being done according to the requirements, and asking the people who are carrying it out—

Dr. GOODWIN. It seems to me—

Dr. HAALAND [continuing]. To make them demonstrate that it is being done. Supervision in every event does not include onsite.

Mr. SYNAR. The point was the park service people weren't there, were they?

Dr. GOODWIN. Congressman, may I clarify that?

Mr. SYNAR. Yes, please.

Dr. GOODWIN. I think that the issue is that the work that we were doing, the archaeological inventory was being done for compliance with section 110 of the National Historic Preservation Act, which is basically a section of the National Historic Preservation Act that requires each Federal agency to account for and inventory archaeological properties on land that it is disposing of.

The responsibility for section 110 compliance rests on the National Park Service. This was not a section 106 undertaking in which the college, as a permittee, would have had responsibility. Basically, their responsibility was to pay me for the work that we did, but the park service wrote the scope.

Mr. SYNAR. All right.

Dr. Haaland, after the land exchange had been executed, did the park service ever propose an alternative site for the railroad maintenance building?

Dr. HAALAND. Yes, they did.

Mr. SYNAR. Who did it?

Dr. HAALAND. I met with Superintendent Cisneros to discuss at least one alternative.

Mr. SYNAR. Did Superintendent Cisneros indicate that eliminating the spur and reconstructing the ridge was a priority of the park service?

Dr. HAALAND. He certainly raised questions about the spur and its use and the issue of the maintenance building and whether there would be an alternative site.

Mr. SYNAR. So he did talk about or indicate that he wanted the ridge reconstructed, and that it was a priority of the park service?

Dr. HAALAND. I don't recall the issue of reconstructing the site, sir. It was a—it was an issue more specifically about the maintenance building.

Mr. SYNAR. When did Superintendent Cisneros make that proposal?

Dr. HAALAND. I believe it was sometime in 1993.

Mr. SYNAR. Summer of 1993?

Dr. HAALAND. I believe so, yes.

Mr. SYNAR. Did the college give serious consideration to that proposal?

Dr. HAALAND. We did, actually.

Mr. SYNAR. Why did you turn it down?

Dr. HAALAND. Well, we thought it had a number of flaws in it or a number of problems. We actually didn't specifically turn it down. We raised a number of questions about that, about the proposed alternative site which we thought were, in fact, quite consequential.

Mr. SYNAR. Was the concern that relocating the building to a flawed site would trigger new and separate reviews and approvals and open up another can of worms?

Dr. HAALAND. Yes, that was certainly part of it.

Mr. SYNAR. What would it take, Dr. Haaland, to get the college to sit down with the park service and the others in the community and work that out, to eliminate the western spur—which is not critical obviously to the operation of the railroad—and reconstruct the ridge?

Dr. HAALAND. I—sir, I have no idea on that. We have been working under the distinct impression that, as part of the exchange, the western spur was required by the railroad in order to make this happen.

Mr. SYNAR. We are learning that it doesn't necessarily have to be critical. Is the college prepared to sit down and undo this damage?

Dr. HAALAND. I guess I would have to answer that in a qualified way because I don't know what—we have been willing to talk with a number of people, and we work closely with the park service and with the Pennsylvania Historic Commission. We have been certainly willing to talk with various—

Mr. SYNAR. The fact that, Dr. Haaland, the western spur is not connected today begs the question of its significant importance.

The question is, is the college prepared to undo this damage?

Dr. HAALAND. I guess it depends on what you mean, sir, by undoing it.

Mr. SYNAR. Basically, put the ridge back in as good a form as in its original being.

Dr. HAALAND. No, we are not at this point prepared to simply do that.

Mr. SYNAR. All right. Dr. Haaland—

Dr. HAALAND. I am willing to explore a variety of options and—

Mr. SYNAR. But that's not one of the options that's acceptable?

Dr. HAALAND. No, that would be dependent on other things. You are—

Mr. SYNAR. What things?

Dr. HAALAND. Again, what impact that has on the railroad, what impact it has—

Mr. SYNAR. I just told you that the western spur is sitting there unconnected. It has no impact because it is obviously not important to it.

The question I have for you—

Dr. HAALAND. My understanding is that that was approved as part of a larger plan by the Pennsylvania Utilities Commission, the ICC, FEMA, all various types of railroad—

Mr. SYNAR. Believe it or not, Dr. Haaland, I am trying to give you a way out here today. I am asking a very simple, straightforward question. Is the college prepared to sit down with the park service, the local community, the people who are concerned; and is one of the options that the college will consider to try to restore this ridge as they found it?

Yes or no? It's not that complicated.

Dr. HAALAND. Well, I think it is complicated. But I would say to the first part, we are definitely willing to sit down and consider all options.

Mr. SYNAR. Dr. Haaland, you assumed your position as the president of Gettysburg College in March 1990, did you not?

Dr. HAALAND. That is correct.

Mr. SYNAR. What involvement did you have in the land exchange prior to assuming your title as president?

Dr. HAALAND. None.

Mr. SYNAR. None. Between your arrival in 1990 and March and September 1990, when you signed the exchange agreement, were you fully apprised by Mr. Van Arsdale of the plans for developing the 7-acre tract and did you fully understand that the college would have to make a steep 30-foot cut almost straight down through Oak Ridge in order for the railroad to build the spur line and maintenance building?

Dr. HAALAND. Yes.

Mr. SYNAR. Well, if you fully understood what was entailed, why did the deed contain a restriction leaving the existing stand of trees which you knew the college couldn't meet?

Dr. HAALAND. When we signed that deed, we weren't certain we couldn't meet that restriction. Some of those trees were removed

and that was inappropriate. Many of them were left, as Mr. Walker said, to the north of where you were onsite.

Mr. SYNAR. Now, since the construction of the land—on the land exchange you have been considerably involved, have you not?

Dr. HAALAND. That's correct.

Mr. SYNAR. In fact, you spent a lot of time, effort, and money on coming to an understanding with the park service on how this quitclaim deed should be interpreted.

Dr. HAALAND. That's correct.

Mr. SYNAR. Dr. Haaland, what is your understanding of the deed restrictions that have been placed on the college in regards to what all can be done on the 7.5 acres that the college acquired from the park service?

Dr. HAALAND. Well, again, that—my understanding was that what was permitted under that deed was the normal operations of a railroad in that area. In fact, we have moved to a more restrictive agreement that is still being considered as a memorandum of understanding, which in fact does not permit all normal operations of a railroad.

Mr. SYNAR. In your view, does this deed mean that you can use the land for any railroad purposes or you are restricted to those you specifically described in the deed?

Dr. HAALAND. Those that are described in the deed, we believe originally on the quitclaim deed did permit normal railroad operations. It is clear, as I said, that that is in the process of being restricted further or clarified further.

Mr. SYNAR. Has the college tried to ensure that the work that is being done on the 7.5 acres complies with the restrictions?

Dr. HAALAND. Yes, we have.

Mr. SYNAR. The restrictions in the deed are that 7.5 acres, Dr. Haaland, should be used for the relocation of the then existing rail line, the construction of a Y interconnect and the construction of a railroad maintenance building and three railroad sidings for railroad storage purposes.

Are these the restrictions that you are aware of?

Dr. HAALAND. Those are the ones that I am aware of.

Mr. SYNAR. If these are the restrictions as placed in the deed, then why did the college try to persuade having the railroad parking facility and the service road on the 7.5 area?

Dr. HAALAND. Those are normal operations for any railroad which we believe is contained in the assets in the spirit of what that would be.

Mr. SYNAR. Now, it is my understanding that once the deed was signed, you then signed a lease agreement with Gettysburg Railroad allowing them a right-of-way to relocate the tracks and maintain the maintenance building; is that correct?

Dr. HAALAND. I believe that is correct.

Mr. SYNAR. In light of that lease agreement with the railroad, what is the college's responsibility with regard to the 7.5 acre tract of land?

Dr. HAALAND. That is what we are in the process of continuing to discuss with the park service.

Mr. SYNAR. But you maintain general responsibility, don't you?

Dr. HAALAND. Yes, we do.

Mr. SYNAR. Now, in order to resolve confusion and differing interpretations concerning the deed restrictions, the park service and the college are working on this memorandum of understanding that you are alluding to, to come to some kind of solution; is that correct?

Dr. HAALAND. That is correct.

Mr. SYNAR. What is the status of that?

Dr. HAALAND. We have been reviewing that over the past number of months, and it is, I believe, almost ready to be signed. I believe most of the points of concern in question have been resolved.

Mr. SYNAR. One of the things under consideration is the need for a curative deed; isn't that correct?

Dr. HAALAND. I'm sorry, what?

Mr. SYNAR. The need for a curative deed to correct the deed that you are presently operating under.

You had a discussion with the park service—the college and the park service—at one point during this discussion of the memorandum of understanding that there was a need for a curative deed; isn't that correct?

Dr. HAALAND. Yes, I believe our counsel has suggested that, that's correct, and/or the counsel for the park service.

Mr. SYNAR. Why has the memorandum of understanding been deemed the more appropriate remedy for resolving confusion than a quitclaim deed?

Dr. HAALAND. The deed is more vague. One can always look for more highly structured answers.

Mr. SYNAR. All right. Now we gather that in order for a curative deed to be executed, the college and the park would have to allow the new deed process to go through the NEPA and historic preservation review process.

There was a meeting on June 10, 1993, between the college's representatives and the attorney and the park service attorney, Gerald Kirwan, Reed Engle, Brenda Barrett, and possibly others. We obtained from the college handwritten notes from that meeting, one portion of which suggests that a curative deed would have to go through this review process and have notice and comment by interested parties.

I'll make this document, exhibit 21, handwritten notes of the June 1993 meeting, part of the record.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Did the prospect—this is the question. Did the prospect of this public review dissuade you all from going with a curative deed, rather than an MOU which wouldn't be subject to public review?

Dr. HAALAND. I recall—I don't recall, sir. I don't—obviously, we were at a point where we wanted to—

Mr. SYNAR. Does it matter to you?

Dr. HAALAND. Does what matter?

Mr. SYNAR. The fact that using an MOU will not allow public input while a curative deed would?

Dr. HAALAND. Does—

Mr. SYNAR. Do you care one way or the other?

Dr. HAALAND. Yes, I do.

Mr. SYNAR. Which one do you want?

Dr. HAALAND. Well, the MOU.

Mr. SYNAR. Is it because you don't like public review?

Dr. HAALAND. No. It is because we have been working on this for almost a decade and clearly——

Mr. SYNAR. Well, are you afraid of public review of something you have been working on for almost a decade?

Dr. HAALAND. In this instance, we felt that the issues that were still remaining were best related by the parties involved.

Mr. SYNAR. Dr. Haaland, this concerns me. I have given you two shots at pulling yourself out of this. One, to say that one of the options that you would seriously consider would be to restore this to its original place. You blew that off.

I have given you a second one, given the history we have gone through here for the last couple of hours, for the problems that you face as a college and in a community, to give the public ample public review. You have now said that you don't want to do that.

What do you want? I mean, do you want this thing to go away and never be heard of again? Because let me tell you, I suggest to you it's not going to go away, and that the best way to make it go away is to have public review.

Now, let me ask you again, if an MOU gets you no public review and you have basically a curative deed that will give you public review, bring the public in, start to rebuild the college's credibility on this issue, don't you think that is in the best long-term interests of the project and the college?

Dr. HAALAND. Those are related to different things. In a public——

Mr. SYNAR. Do you believe in public review, Dr. Haaland?

Dr. HAALAND. Yes.

Mr. SYNAR. Getting back to the events that precipitated the need for this curative deed, hasn't there been ongoing confusion with regard to the construction of the maintenance building and the wall that has been put in place to stabilize the slope?

Dr. HAALAND. There have been concerns over the wall.

Mr. SYNAR. Yes. Isn't there some confusion with regard to the construction?

Dr. HAALAND. Confusion? The work——

Mr. SYNAR. It didn't work, did it?

Dr. HAALAND. It didn't work and it had to be redone. I don't know that that is confusion.

Mr. SYNAR. When the college and Gettysburg Railroad realized that corrective action was needed to stop the erosion of the park, who undertook the responsibility of constructing and paying for the wall?

Dr. HAALAND. The college.

Mr. SYNAR. The college?

Dr. HAALAND. The second time, yes.

Mr. SYNAR. First time?

Dr. HAALAND. The railroad.

Mr. SYNAR. The first attempt to construct the retaining wall was not successful, as we have said. As a result, the wall failed to halt the erosion. You assumed responsibility for the second which was far more substantial. As a matter of fact, we were told by your contract engineer that the wall is 12 feet thick and consisting of al-

most 1,800 tons of stone and 600 tons of top soil, obviously this is going to cost you a pretty penny at the college.

Now, as a result of that ongoing problem with erosion and the wall, has the college assumed tighter control over the actions being taken by the Gettysburg Railroad on the 7.5 acres?

Dr. HAALAND. We continue to work closely with the railroad on what goes on there. We don't manage their business as it is occurring. We certainly have with regard to that particular gabion where they have moved materials and—

Mr. SYNAR. You are still having problems on the erosion of the site behind the maintenance building, are you not?

Dr. HAALAND. I believe that work continues except that it is scheduled to be completed shortly.

Mr. SYNAR. Leaving aside the issue of whether the cut should ever have been made, do you think the college might have avoided this serious erosion problem by hiring an engineering firm to help with the initial construction?

Dr. HAALAND. Yes, that might well be the case.

Mr. SYNAR. The park service was quite specific regarding the railroad maintenance building, that is, that it be a certain height and also be painted a color that would blend into the surroundings to the fullest extent possible; isn't that correct?

Dr. HAALAND. Not in the original deed, sir. We actually voluntarily lowered the height that was in the original deed and working with the park service, and we agreed with them that they could specify the color. That is correct.

Mr. SYNAR. That's correct.

Now, in the preliminary discussion surrounding the curative deed, one of the issues continually addressed at the meetings was that the exterior of that maintenance building be painted in earth tones.

Why didn't the college consult with Gettysburg Railroad when it became obvious that that white roof was going to be placed on the maintenance building?

Dr. HAALAND. If you knew the railroad people, sir, you might not wonder. We had fully—we communicated to them what the expectations were. We gave them the paint chips.

Mr. SYNAR. So Sloan Cornell just ignored your request?

Dr. HAALAND. Apparently, initially.

Mr. SYNAR. You had to pay for the replacing of the roof with a darker panel, another considerable expense, didn't you?

Dr. HAALAND. That's correct.

Mr. SYNAR. If and when the college and the park service are able to sign a final MOU or execute a curative deed to address these problems, how do you know that the college will make a full effort to abide by it, since obviously the original deed restrictions were to be taken seriously, but you have just shown through this testimony you have interpreted them fairly—pretty liberally.

Dr. HAALAND. Well, we interpret those in the way we understand they were meant to be. So we have agreed—see, I would disagree with you, sir. We have agreed to a subsequent set of agreements that are represented in the MOU that do explain what that quit-claim deed was meant to be.

Mr. SYNAR. All right. Dr. Goodwin, let's come back to you.

Dr. GOODWIN. Yes, Congressman.

Mr. SYNAR. I asked you specifically, did the park service seek your assessment as to whether the proposed western spur, siding, and railroad maintenance building would detract from the ability of the park service to interpret of the events of the battle?

Dr. GOODWIN. And I now understand where that came from, Congressman, because you—your staff was kind enough to provide me with a copy of the letter in question.

[The information can be found in the appendix. Dr. Goodwin is referring to exhibit 18.]

Dr. GOODWIN. I don't recall the exact language of the scope of services with reference to this, Congressman, but it is basically another way of saying the same thing, that there are no archaeological—

Mr. SYNAR. We have reviewed that and the scope of your services did not include that.

Dr. GOODWIN. That's fine.

Mr. SYNAR. But yet the language on that exhibit which you have in front of you from the August 6 letter says, "will not significantly detract from the ability of the National Park to interpret the events of July 1 through 3, 1863, to the public."

Dr. GOODWIN. That's correct, Congressman. That's the second half of the sentence, preceded by a comma, and that sentence begins with, "showed that proposed railroad spur, siding, and maintenance building will not impact any significant archaeological resources." The second clause refers back to the first, "archaeological resources."

Mr. SYNAR. I think the purpose of the question is why did you comment on it if it wasn't within the scope of your service?

Dr. GOODWIN. Congressman, I don't recall why I was a little bit wordy here. But it says the same thing twice, basically. If you don't have any archaeological resources, there can't be any impact to them.

Mr. SYNAR. Thank you. Let me thank all of them for coming, and all of you for coming. We hope that even though the day is long that you will stay with us because if you think you had an interesting time, the park service is going to have an even better one.

So, with that, we thank this panel and we invite the final panel up.

Dr. GOODWIN. Thank you, Congressman.

Mr. SYNAR. The Honorable Roger Kennedy, Director of the National Park Service. Today he is accompanied by Edwin Bearss, James Coleman, José Cisneros, Bob Davidson, Dr. David Orr, Gerald Kirwan, Kathy Harrison, Reed Engle, and Robin Lepore.

Do any of you have any objection to being sworn in? Stand and please raise your right hand.

[Witnesses sworn.]

Mr. SYNAR. Well, welcome. This is the first time I have had the National Park Service and you, Mr. Kennedy, before us; and this is a great opportunity for both the subcommittee and the park service to get to know each other a little bit better.

We look forward to your testimony. Your entire testimony will be made part of the record. We would ask you to summarize here in about 5 minutes.

STATEMENT OF ROGER KENNEDY, DIRECTOR, NATIONAL PARK SERVICE, ACCOMPANIED BY EDWIN BEARSS, CHIEF HISTORIAN; JAMES COLEMAN, REGIONAL DIRECTOR, SOUTHEAST REGION; JOSÉ CISNEROS, SUPERINTENDENT, GETTYSBURG NATIONAL MILITARY PARK; BOB DAVIDSON, SUPERINTENDENT, MOORE'S CREEK NATIONAL BATTLEFIELD PARK; DAVID ORR, REGIONAL ARCHAEOLOGIST, AND GERALD KIRWIN, CHIEF, LANDS DIVISION, MID-ATLANTIC REGIONAL OFFICE; KATHY HARRISON, CHIEF HISTORIAN, GETTYSBURG NATIONAL MILITARY PARK; REED ENGLE, CULTURAL RESOURCE SPECIALIST, SHENANDOAH NATIONAL PARK; ROBIN LEPORE, ATTORNEY/ADVISOR, NORTHWEST REGIONAL OFFICE, OFFICE OF THE SOLICITOR, AND ROBERT L. BAUM, ASSOCIATE SOLICITOR FOR CONSERVATION AND WILDLIFE, U.S. DEPARTMENT OF THE INTERIOR

Mr. KENNEDY. Thank you. I think I can take a little less than that, Mr. Chairman, because I don't intend to read my summary statement to you.

I have learned a lot today, and I want to thank you and the committee for your attention to this matter.

Our testimony, and certainly my strongest views, are related to the challenge which you offered at the outset, which was to attempt to consider the circumstances that have been manifested to us, which are lamentable; and to seek ways in which the park service and other resource agencies can come to have—and quickly—adequate and consistent policy guidelines and criteria for judging the merits of exchanges.

Speaking for myself, I am a professional historian. I was for 13 years the Director of the National Museum of American History at the Smithsonian. While the nine books that I have published in the field of American history do not deal with military history—nor do the 12 books in American history which I have edited—I spent nearly all of my 50-odd years writing history. I reflected upon the causes of the Civil War and the conditions in American society which made it the disaster that it was and probably in Mr. Lincoln's sense, the necessary disaster.

It seems to me as I have listened to the testimony that it might make some things a little easier if I were to stipulate things that I believe to be true. I find no reason to doubt the historic significance of the particular part of the battlefield that we are discussing here. Whether or not there are archaeological artifacts under the surface it is what happened on the surface that matters. It is the experience of death and loss because that is what war is about, loss, what doesn't happen after it because people are no longer either alive or fully capable of performing fully the lives they might have had, had there not been war.

This is a place of intense significance to the American people. The particular piece of hallowed ground that has been discussed, the 7.5 acres, is a crucible of the American experience, and I don't see any utility to be derived in further debate on that subject.

The entire battlefield and the environs are, of course, all of them significant. But this is particularly so. I found Mr. Brown's testimony particularly compelling in that regard.

Further, it seems to me that it is useless for the Director of the National Park Service to come before you to assert that this was not a mistake. I don't think it is a betrayal of my colleagues for me as a new person, relatively new to the service, to assert that it was not a mistake. Its consequences are very sad. I think we all agree to that.

And I think it is also beyond debate that the procedures and processes then in place were inadequate, and if it didn't happen here, it could easily have happened somewhere else, and they have got to be fixed.

In the formal testimony before you, there are some suggestions as to the steps currently under way to seek within the Department and within the park service itself to make it less likely that this kind of tragedy will recur. It seems to me that they break into two categories. We must have guidelines that are sufficiently specific and detailed to guide us carefully whenever a piece of the national patrimony is relinquished, either by exchange or, as may occur sometime in the next few years, by divestiture.

Whenever that occurs, it is absolutely the responsibility of the Federal agency which has the trusteeship of that piece of property to assume, first, that it understands why that property is important, what its central significance was and is, and to strive diligently to see to it that that significance is not derogated by the effects of its devolution.

Guidelines, of course, even legislative guidelines, are not sufficient. Guidelines are useful; they set a standard. But the question I think before us as professional managers becomes, with much more elaborate guidelines, how are you going to do the work better? How are you going to assure the kind of collegial consultation which manifestly did not adequately occur in this instance? How are you going to manage your affairs, given guidelines?

And some of the steps that are listed in the prepared testimony—I'm sorry I'm running on a bit, but I would like just to state my own view of this, if I may. Some of those steps are intended to bring closer together the planning process and the assessment of historic and archaeological significance, so that planners, lawyers, superintendents, and scholars are talking to each other because they are in the same part of the service, not some here and some there, where there is the possibility of one more instance in which that kind of consultation doesn't occur, so that we can make it less likely that there would be recurring tragedies of this sort.

Mr. Chairman, my colleagues and I are prepared to answer whatever questions you may put to us.

[The prepared statement of Mr. Kennedy follows:]

STATEMENT OF ROGER G. KENNEDY, DIRECTOR, NATIONAL PARK SERVICE,
DEPART OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENVIRONMENT,
ENERGY, AND NATURAL RESOURCES, HOUSE COMMITTEE ON GOVERNMENT
OPERATIONS ON THE 1990 TRANSACTION BETWEEN GETTYSBURG NATIONAL
MILITARY PARK (GNMP) AND GETTYSBURG COLLEGE.

May 9, 1994

Good morning, Mr. Chairman. I welcome this opportunity to represent the National Park Service, an organization of which I am proud to be Director, and present its views and address your questions concerning the 1990 land exchange with Gettysburg College.

The National Park Service takes its responsibility for preservation and protection of this countries' heritage very seriously. In fact, Secretary Babbitt has made it clear that resource protection is his highest priority for National Park areas. Therefore, it troubles me that our collective effort to ensure long term preservation of this important battlefield has resulted in a situation perceived by some good citizens as not in the best interest of overall protection and interpretation of the area. It troubles me, too, that the National Park Service may be perceived as initiating action that, inadvertently, resulted in disturbance of battle significant resources.

Before I review the Boundary Study and resultant land exchange with you, I want to make clear to the committee that the National Park Service has learned from this situation. It is in the process of making changes to ensure that safeguards not in place in the past will be there to govern future land exchanges:

◆ We are making a comprehensive review and update of our National Park Service Planning procedures (NPS-2), which guide elements of boundary studies, additions, and deletions. These revised guidelines would ensure detailed evaluation of overall resource significance to the park story, require closer scrutiny of potential uses, and require a thorough evaluation and detailed information concerning potential impacts to park resources. We expect to have a comprehensive proposal prepared by the end of the calendar year.

◆ Our Land Acquisition Policy Implementation Guideline (NPS-25) is in the initial stages of revision, and a draft of the Exchange chapter from our Land Acquisition Procedures manual is on in-house review. We will ensure that these revised documents include updated and more detailed requirements for assessing resource significance and determining potential impact. We will also provide guidance on what is and what is not an acceptable exchange. We will encourage consideration of covenants and conditions in land exchange instruments to assure resource protection. We will also ensure all proposed exchanges or deletions receive more rigorous evaluation. We will expedite revision of the Guideline.

◆ A specific section in each park's Statement for Management will address the basic purpose of the park. Through a management assessment process,

each area will do a thorough review of its enabling and other pertinent legislation to evaluate and articulate its basic purpose. Two National Park Service Regions have implemented this type of evaluation and have found it to be invaluable in streamlining, strengthening, and fine tuning their interpretive and resource management programs.

◆ The Mid-Atlantic Regional Office has reorganized its internal operations; about 9 months ago, its Planning and Cultural Resource divisions were combined under the same supervisor. This was done in recognition of the predominance of significant cultural resources in that region and the need to incorporate more completely these resource concerns into planning decisions.

◆ The National Park Service has already taken steps to ensure that landscapes, historic scenes, scenic vistas and values, and other such cultural resources are not overlooked. We have strengthened our cultural landscape capabilities by hiring Cultural Landscape Architects in some regions and the Washington office and have delineated a specific Cultural Landscape Program in the latest version of our Cultural Resource Management Guidelines (NPS-28). Further, the National Park Service in-house cultural

resource compliance document now requires evaluation of cultural landscapes and historic scenes prior to implementing an action that may result in a resource impact.

◆ Finally, in recognition of the need to establish and maintain park resource data bases in a format that can be easily used, that can be related to other data sets to facilitate planning and resource protection, and that can be maintained in perpetuity, the National Park Service is emphasizing enhancement of its Geographic Information System (GIS) capabilities. This is reflected in the National Park Service's Fiscal Year 1995 Budget Request under Operation of the National Park System. Our recent Civil War Battlefield Initiative, for example, has made great use of the Service's GIS capabilities.

The armies of Lee and Meade spread out and fought across 20,000 acres in the environs of Gettysburg those scorching days of July 1, 2, and 3, 1863. Of these 20,000 acres, 6,000 are now within the park boundary and are fully protected. (This includes the 2,000 acres added in 1990). Another 3,600 are within the Gettysburg Battlefield Historic District and enjoy a measure of protection and oversight by the Pennsylvania Historical and Museum Commission as provided for by the 1966 National Historic Preservation Act. This still leaves approximately 10,000 acres that have little, if any, protection.

BOUNDARY STUDY, BACKGROUND

The preservation effort at Gettysburg National Military Park was initiated by Congressional enactment of P.L. 100-132. This directed the National Park Service to conduct a boundary study of the area and was supported and participated in by local officials, landowners, other private citizens, and the historic preservation community. What follows is based upon my understanding of the facts related to this exchange.

The legislated boundary study followed the standard format and procedures used by the National Park Service for such projects. In order to evaluate the remaining, unprotected acreage and identify areas of particular import to the preservation and interpretation of the battlefield, the planning team developed four criteria against which to assess the significance of areas suggested for inclusion in or deletion from the park. These were cultural resource significance, interpretive importance, visual significance, and management feasibility. Each study parcel was analyzed against these criteria. The report was prepared with substantial involvement of local officials, agencies, landowners, and other interested parties utilizing a format that included four public workshops, two newsletters sent to over 1,000 individuals, and numerous informal consultations. Its final recommendations were (Boundary Study p. 1):

(1) Add 14 outstanding resource areas, encompassing approximately 1,900 acres, that contain key sites and features of the battle not now adequately protected or interpreted.

(2) Delete all or part of 8 relatively small areas that are no longer needed for resource protection, park development, or public use, totalling approximately 25 acres.

(3) Encourage cooperative approaches with the Commonwealth of Pennsylvania, local governments, and the private sector to protect historic qualities of the battlefield setting.

(4) Protect outlying monuments and markers primarily through cooperative agreements with landowners.

(5) Encourage creative approaches to land protection, such as purchase-and-sell back or lease-back arrangements, to maintain compatible private land uses within the park.

Finally, the study included an environmental assessment, which detailed the potential impacts of each proposed action.

This study laid the groundwork and was the vehicle through which the decision was made to add and delete areas from the park. The National Park Service, working with the community of Gettysburg, other interested groups, including those concerned with the preservation of Civil War battlefields, and with members of its Congressional delegation, proposed the addition of 14 outstanding resource areas totalling about 1,900 acres and the deletion of 8 tracts totalling 25 acres that because of management considerations or decreased site integrity, were no longer essential to the park. Of those areas ranking high for protection were 47 acres of land, part of the 11th Corps Line that figured prominently in the 1st day's battle, owned by Gettysburg College. Among those areas not specified for preservation was the Park/College Boundary parcel. This 7.5 acre parcel was later exchanged for the 47 acre easement on College owned land, which resulted in the current controversy.

The 11th Corps Line area was considered important for preservation because, as stated in the Boundary Study (p. 31), "Throughout this area are the last positions of the Union 11th and 1st Corps on July 1, 1863, prior to the retreat through town to Cemetery Hill. Confederate forces also used the area as an artillery park and battery through July 3. Almost 30 monuments stand . . . commemorating many of the 11th Corps positions during July 1. . . . While in agricultural use during the battle, the current land use as college playing fields retains the open character necessary for interpreting the area and protecting the immediate context

of commemorative monuments." The objective for acquiring this parcel was to "Maintain the historic openness of this land such that these defensive positions of the Union 11th and 1st Corps can continue to be commemorated and interpreted"

The boundary study also clearly stated the objective for deletion of the Park/College Boundary parcel: "Provide for re-routing of Gettysburg Railroad tracks along current park boundary" (Boundary Study p. 37). Description of this parcel reads, "A possible re-routing of 3,600 foot of the Gettysburg Railroad line from its current location on the Gettysburg College campus to one along the park/college boundary would require minor park boundary alterations. This change would provide benefits for the college and would not have an adverse impact on known historic resources" (Boundary Study pp. 36-37).

This College-owned 47 acre parcel had also been identified as important to preservation of significant aspects of the battlefield in the park's General Management Plan approved in December 1982 and, earlier, in the Advisory Council on Historic Preservation's 1977 A Plan to Preserve the Historic Resources of Gettysburg Area of the Commonwealth of Pennsylvania; A Report Prepared by the Advisory Council on Historic Preservation.

The exchange of lands with Gettysburg College on September 26, 1990, was one of the first actions taken in the implementation of P.L. 101-337, which added approximately 2,000 acres of battle significant land to Gettysburg National Military Park. This law that resulted from the Gettysburg National Military Park Boundary Study provided the then 96-year old military park with its first definitive, legislative boundary. The National Park Service's records indicate broad support for the bill, expressed at the hearings by an impressive array of community leaders and members of the preservation community, including representatives of the Gettysburg Battlefield Preservation Association.

The records indicate that despite the controversial end result of this exchange, the process followed the specified agency procedure at the time, including extended involvement by interested parties. It was open, and the objectives of land addition and deletion were clearly stated. The determination of land significance and recommended disposition followed a documented, systematic process that included involvement of agency experts as well as interested landowners and other citizens. Through this process it was decided that preservation of 47 acres of significant battle ground in open space was worth the deletion of 7.5 acres of land. The National Park Service concluded that it would be able to preserve the last remnants of the 1st day's battlefield in open space and, in return, the College would be able to reroute a railroad off its campus.

The Study clearly documented the objectives sought for each parcel and assessed the impacts upon each as understood at the time. Questions arise, in hindsight, concerning the adequacy of information available at the time of the boundary study. In retrospect, for example, our decision making would have benefitted from early receipt of an engineering survey and design drawings showing the elevation change needed to accomplish the proposed railroad rerouting.

While as early as 1987 College representatives met with the staff of the park to discuss their proposal to exchange an easement on College lands for park land in order to move a section of railroad running through the campus, the record does not show full appreciation of how large and obtrusive that action would be. There are, instead, many statements in the record reflecting varying interpretations and understandings of the rerouting situation.

None of the engineering and design information needed to evaluate fully the extent and impacts of the proposal was available while the boundary study was underway or until after the exchange had occurred and construction drawings were being prepared. The lack of detailed, specific information was not noted in internal or external review of the Boundary Study, including review and evaluation by the Pennsylvania Historical and Museum Commission (the State Historic Preservation Office.) For projects managed internally by the National Park Service, it is only at the design and construction stages that such detailed information becomes

available. Its absence was not, therefore, obvious to the Park Service personnel involved in the planning stage, nor was that absence noted at the time by the Pennsylvania Historical and Museum Commission. All interests focussed upon retaining as open space the significant 1st day battle ground; exchanging these important 47 acres for 7.5 acres thought to have minimal historic import.

RESPONSE TO SPECIFIC MATTERS

In addition to information about the Boundary Study that led to the land exchange, you have requested the views of the National Park Service as to the following general subjects:

Interplay among NPS Offices throughout the Boundary Study and Land Exchange. Planning projects of this magnitude are generally done by the Planning Division in National Park Service Regional Offices. In this instance, a Planning Team composed of regional and Washington office planners and park personnel was assembled. The full team is listed in the Boundary Study (p. 59.) The core team was headed by a Senior Planner from the Mid-Atlantic Regional Office. The Park Superintendent, Management Assistant, and Chief Historian represented the park. Park staff, principally the Historian, was responsible for assessing the historic significance of the study parcels against the established criteria. In addition, the National Park Service Chief Historian Edwin Bearrs, a noted expert on the Civil

War, served as a consultant during the study process. As part of this study other technical experts, such as the Regional Archeologist, were also brought in on a consultant basis. The draft document was distributed widely for in-house and public review.

After the Boundary Study was completed, the National Park Service Office of Legislation, Washington, was responsible for monitoring the legislative action on the Boundary Act, P.L. 101-377. No Washington office staff was involved in execution of the land exchange or in the subsequent dealings concerning activities on the land by the College and its contractors. This was handled by the Division of Land Resources, Mid-Atlantic Regional Office and the park.

Receipt and Distribution of Maps. The record indicates that the first map depicting the proposed relocation was provided by Gettysburg College to the National Park Service on December 16, 1987. This map identified the proposed track routing along the base of the ridge terminating in a wye at the southern end where it intersected with the existing east/west line. It was transmitted to both the park and the Regional Office and was the basis of later, more detailed maps. The next map, dated March 14, 1989, illustrated the full extent of the proposed relocation. However, it was too late for use in public hearings, the last of which was September 14, 1988. Subsequent revisions of that map added the proposed railroad barn and additional topographic information up to the September 1990

exchange. After the exchange, the map was revised four times in 1991 to increase the railroad R/W area & profiles, raise new railroad centerline 2.2', and revise railroad & curves on east & west spur (this was done twice.) These maps were also distributed to the park and the Regional Office.

Compliance with the National Historic Preservation Act and the National Environmental Policy Act. The National Park Service planning process includes procedures to insure that an environmental assessment, if appropriate, is included as part of the project. In this case, because of the proposed boundary deletions and finalization of a proposed boundary for the park, an environmental assessment was included as part of the project and presented in the final Boundary Study. As early as June 1987, the Park Service contacted the Pennsylvania Historical and Museum Commission, advising it of the upcoming boundary study. On September 7, 1988, the draft Boundary Study was submitted to the Commission for review. On January 1, 1989, it responded to the Boundary Study and recommended only that a Phase I archeological investigation be conducted on the tract proposed for deletion. Appropriate archeological investigation was carried out, in consultation with the Commission, and the results were made available upon completion of the field work.

The records indicate that the Park Service complied fully with its own technical regulations as well as those required by the National Historic Preservation Act and

the National Environmental Policy Act. The Finding of No Significant Impact (FONSI) on the project was signed December 9, 1988. The records also indicate that all applicable regulations and internal guidelines applicable to the Gettysburg College/National Park Service land exchange were met.

Quitclaim Deed Development. The quitclaim deed for the 7.5 acre tract and of the scenic easement for the 47 acres of College land was developed by the Division of Land Resources in the Mid Atlantic Regional Office. This effort began as early as 1988 and continued into the summer of 1990. I have been told that Mr. Gerald Kirwan, Chief of the Land Resources Office, Mid Atlantic Region, has provided the Subcommittee with a chronology of his involvement in the exchange. Essentially, the quitclaim deed restricted the use of the 7.5 acres to the construction of the railroad lines and a railroad barn depicted on survey plats recorded September 25, 1990. It further specified that the existing screen of trees and other vegetation between the site of the planned railroad facilities and the College proper be retained as a visual screen.

Easement language for the 47 acres restricted their use solely for College playing fields and related, existing facilities as depicted on a map of the area. It contained standardized easement language concerning protection of archeological resources and a restriction against dumping on the land.

Park Service Actions upon Violation of Quitclaim Deed. The only provision of the quitclaim deed that was violated was the requirement to retain the existing screen of trees and other vegetation between the site of the planned railroad facilities and the College. Other than immediate investigation of the incident, no action was taken upon removal of approximately 1/3 of the trees because the railroad bed in that area had to be raised approximately 10 feet; a process that would have destroyed the existing vegetation anyway. The College was, however, required to replace the trees once the grading was completed. A landscaping plan prepared by the College was approved September 1993, after much consultation with park staff, and tree planting was initiated shortly thereafter.

Post-exchange Memorandum of Understanding. A Memorandum of Understanding between the College and the park is in the final stages of completion. This document deals with several post-exchange issues concerning implementation of the quitclaim deed. Principal among those issues is stabilization of the ridge slope resulting from the grading work. The Memorandum prescribes the color of the railroad barn and specifies a lowering of the previously agreed to height in an effort to lessen the visual impact of the structure. It also provides for vehicular use of the rail line berm by employees of the railroad. It restricts storage of railroad materials to three years on a portion of land in College ownership prior to the exchange; storage of materials on land previously belonging to the park is prohibited.

The College also was requested to install several sections of gabions in order to stabilize the ridge slope adjacent to the tracks. This is completed.

Federal Requirements for Intrastate Land Exchange. The National Park Service has two documents that provide policy and guidelines for implementing land exchanges: Land Acquisition Policy Implementation Guideline (NPS-25) and Land Acquisition Procedures, which is a manual consisting of a number of chapters, such as Policies and Authorities, Title Evidence and Opinions, Negotiations, and Boundary Adjustments. These chapters are revised as needed. Currently, the chapter on Exchanges has been updated and is on in-house review, and NPS-25 has been sent out to our regional offices in its entirety for comment anticipatory to major revision.

Mr. Chairman, we appreciate your concerns for better protection of the Gettysburg battlefield and other places in the custody of the National Park Service. We certainly have learned a lesson from the situation at Gettysburg wherein all parties may have misjudged the impact of the railroad relocation on the battleground. Through improvement of our internal procedures it is our intent to ensure that future exchanges will strengthen the National Park system. It is apparent that we must better anticipate and understand the potential uses of properties that are deleted from the National Park System and develop better information and clearer agreements to protect the land more effectively.

I will be pleased to answer questions you or the Subcommittee may have.

Mr. SYNAR. Mr. Kennedy, I want to, first of all, tell you that we are grateful; and I want to thank you for those very frank and I must say most honest remarks. Obviously, this is something that the subcommittee welcomes.

I don't want you to think that I am ignoring you. You weren't the director of the time of the exchange, and as well intended as your remarks are, and I take them as the most sincere commitment to this subcommittee and Congress, we have still got a couple of hours of nice questions for those who were in charge at the time in order to build a record, so that the service will know from this time forward that these types of mistakes cannot occur again.

So with that, I will come back to you at the end of hearing to talk about some of the proposed changes to things.

Yes?

Mr. KENNEDY. Mr. Chairman, I am sorry I should have read something to you. There is one more sentence that I should have read to you.

We have attempted to cooperate fully with the subcommittee in this investigation, including making the files and testimony of our legal counsel available. Because the litigation in this matter is complete, we have no objection to the subcommittee publicly releasing such otherwise confidential material as it deems appropriate for the record.

Mr. SYNAR. I appreciate that statement of cooperation concerning the Solicitor's Office documents. That is a nice change from what we usually get from agencies and lawyers.

All right, Ms. Harrison, let's start with you. Explain the duties you have at the park and your role in the development of the 1988 boundary study for the park.

Ms. HARRISON. I served in an advisory capacity as park historian for the boundary study. I took an initial crack at looking at what the resources were beyond the scope of protection at the time that were not in the existing park boundary and submitted those to the park boundary study team for their consideration.

Mr. SYNAR. Mr. Davidson, at the time in question, you were the assistant to the superintendent and chief compliance officer at Gettysburg; and you also served on the boundary study team, correct?

Mr. DAVIDSON. Yes, sir, I did, sir.

Mr. SYNAR. At certain times you were the acting superintendent under Superintendents Earnst, Kuehn, Deckert and Cisneros, correct?

Mr. DAVIDSON. Yes, that is right.

Mr. SYNAR. Mr. Bearss, you are the Chief Historian for the whole park service, are you not?

Mr. BEARSS. Yes, sir.

Mr. SYNAR. You were also a member of the boundary study team, is that correct?

Mr. BEARSS. I was a member of the boundary study team.

Mr. SYNAR. Let's get a microphone down at that end.

Mr. BEARSS. Yes, sir, I was a member of the boundary study team in the same category that Historian Harrison was a consultant.

Mr. SYNAR. Mr. Coleman, you were regional director for the mid-Atlantic region prior to and at the time of the exchange, correct?

Mr. COLEMAN. Yes.

Mr. SYNAR. Who was the project leader for that boundary study?

Mr. COLEMAN. Project leader, I assume you mean Jonathan Doherty.

Mr. SYNAR. I think that is correct. In what division of the regional office did Mr. Doherty work?

Mr. COLEMAN. I don't know what his exact title was, planning, I guess.

Mr. SYNAR. Park planning, OK.

Mr. Coleman, was Mr. Doherty trained in the preservation of cultural resources?

Mr. COLEMAN. Not that I know of.

Mr. SYNAR. Was the park planning branch a separate division within the regional office at the time of the boundary study and land exchange?

Mr. COLEMAN. Yes, it was.

Mr. SYNAR. Is the park planning branch still a separate division?

Mr. COLEMAN. That is not my region. I don't know how they are organized. It wasn't when I left.

Mr. SYNAR. Dr. Orr, where is it today?

Dr. ORR. It is under the associate directorship of planning and resource preservation. Planning is with cultural resources.

Mr. SYNAR. You are the regional archaeologist and were during the 1987 to 1990 timeframe also, correct?

Dr. ORR. Yes, sir.

Mr. SYNAR. Ms. Harrison, who was the principal author of the August 1988 boundary study and environmental assessment which was sent to Congress?

Ms. HARRISON. It would have been Jonathan Doherty.

Mr. SYNAR. The subcommittee staff held several extensive interviews with Mr. Doherty, including one discussion which we taped with his permission. Unfortunately, Mr. Doherty could not appear in Washington today but will appear later this week if necessary, and we are going to be discussing the necessity of his appearance with the minority later.

During our interviews with him, Mr. Doherty informed the subcommittee that he wrote the section of the study discussing the deletion of the park property along the boundary of Gettysburg College.

Now, let me read that section of the study discussing the proposed land exchange from pages 36 and 37.

Park/college boundary—a possible rerouting of the 3,600 feet of the Gettysburg Railroad line from its current location on the Gettysburg college campus to one along the Park-College boundary would require minor park boundary alterations. This change would benefit or provide benefits for the college and would not have an adverse impact on known historic resources.

Objective: Provide for rerouting of the Gettysburg Railroad tracks along current Park boundary.

Mr. Davidson, this language would suggest that the park service had some information about the college's plans to relocate the railroad. For example, it indicates that 3,600 feet of railroad was going to be removed.

Now, Mr. Doherty told the subcommittee that he got this information from Mr. Van Arsdale at the college. We have already discovered that the college, as you heard from previous testimony, had

engineering proposals in its possession as early as September 1987 and that these engineering proposals reflected the plans for a Wye interconnect that Sloan Cornell and the college had as early as 1978.

Now, the question is, did you know the college had this detailed information prior to the boundary study?

Mr. DAVIDSON. I was not aware of a map in that detail, no.

Mr. SYNAR. All right. You assumed that the college provided you with full information much like the public assumed the park service would provide them full information, correct?

Mr. DAVIDSON. I think my understanding and a lot of other people's understanding was at this point it was a very general type of a proposal, that it was not very specific at that time in terms of what size piece of land they needed and the shape of it.

Mr. SYNAR. But during your discussions at this time, is it correct to assume that you expected the college to provide you full information?

Mr. DAVIDSON. Eventually, yes.

Mr. SYNAR. All right. In our interviews with Mr. Doherty, he initially indicated to us that he had a map at the time of the boundary study that revealed the college's plans to relocate the railroad and that this map indicated a western spur. However, in the subsequent discussion he says that he doesn't recall when he first received that map showing the western spur.

Now, Ms. Lepore, are you the assistant regional solicitor?

Ms. LEPORE. That is not actually my title, but, yes, I am a staff attorney in the northeast regional Solicitor's Office.

Mr. SYNAR. You prepared the legal brief for the Department of Justice to use in its response to the complaint filed by the Gettysburg Battlefield Preservation Association over the land exchange?

Ms. LEPORE. That is not exactly accurate. I prepared parts of the litigation report. The U.S. attorney was the one that actually prepared the brief. I did have the chance to review it prior to its being filed.

Mr. SYNAR. Now, in December 1993, did you help prepare the truncated version of the legal brief for an official in the regional office?

Ms. LEPORE. I am sorry?

Mr. SYNAR. In December 1993, did you help prepare—

Ms. LEPORE. The factual statement, yes, I took that from portions of what was originally drafted as the litigation report.

Mr. SYNAR. OK.

Now at this time I would introduce into the record exhibit 22, which is in the books in front of you, the memo from you, Ms. Lepore, to Fred Herling, who is the outdoor recreation planner from the mid-Atlantic regional office dated December 8, 1993. It is entitled "Chronology of Events Regarding the Land Exchanges at Gettysburg." Refer to page 6.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, you interviewed Mr. Doherty and a number of other park service employees in connection with your work on the Gettysburg land exchange lawsuit and this memo is based on that work?

Ms. LEPORE. Right.

Mr. SYNAR. According to this memo, Mr. Doherty informed you that he was aware of the college's plans and realized that the Ridge would be excavated. Now, he meant he knew at the time of the boundary study, right?

Ms. LEPORE. I do not think so.

Mr. SYNAR. Why does this memo say that?

Ms. LEPORE. I believe that he said he knew at some point that there would end up being a Wye.

Mr. SYNAR. Why did you write that as part of the brief?

Ms. LEPORE. His recollection of these events—

Mr. SYNAR. At this point in the brief?

Ms. LEPORE. Mr. Doherty recalls later visiting the site, standing near the western Maryland line and recognizing that the hill would be excavated.

Mr. SYNAR. This is related to the boundary study. I mean, the brief is about defending the boundary study, and you said that in your interview with him he knew at the time of the boundary—

Ms. LEPORE. I do not know at what point Mr. Doherty knew that there would end up being excavation. I do know that he told me that at some point he realized that there would be excavation.

Mr. SYNAR. Ms. Harrison, we have been talking about what Mr. Doherty knew and when. Let's talk a moment about what you knew and when. When did you first learn about the college's general plans to relocate the railroad?

Ms. HARRISON. In August 1987.

Mr. SYNAR. What triggered that?

Ms. HARRISON. We were visited by Mr. Van Arsdale of the college, and he asked us if he could have an onsite visit, and I was sent by the superintendent with Mr. Eubanks to get a briefing onsite by Mr. Van Arsdale.

Mr. SYNAR. What did Mr. Van Arsdale explain to you at the time about the present relocation?

Ms. HARRISON. At the time I was out there on August 6 we walked in from the Mummasburg Road and walked beyond the pond and were told at that time that the college envisioned relocating the track to that area, that it would stay on what was called a plateau, it was a level area at the base of the ridge which would be east of the woods of Seminary Ridge.

Mr. SYNAR. And it would not necessitate any cutting of trees without the approval of the park superintendent, correct?

Ms. HARRISON. Correct, we were assured that there would be no trees cut.

Mr. SYNAR. Did Mr. Van Arsdale tell you that the college was planning to build a western spur to interconnect with CSX?

Ms. HARRISON. I believe he did at that time but the location of the spur was supposed to have been, at least to my recollection, much further east than where the construction eventually took place.

Mr. SYNAR. Isn't it true that document after document from the park service files all the way up through the notice the park service received that Goodwin & Associates would be in the park to do an archeological survey talked about an area along, and I want to get this right, "the base of Oak Ridge"?

Ms. HARRISON. To my recollection that is correct.

Mr. SYNAR. Did you support the deletion of land along the college-park boundary based on the information you received from the site visit with Mr. Van Arsdale and subsequent documents that indicated a more severe course of action?

Ms. HARRISON. That is correct.

Mr. SYNAR. Had you known that a large corner of Oak Ridge itself was ultimately going to be deleted from the park and chopped off would you have approved this recommended deletion?

Ms. HARRISON. No, I would not, but I was not at a point of responsibility where I could have stopped it, but I would not have approved it, no, sir.

Mr. SYNAR. Ms. Harrison, were it not for the college's desire to relocate the Gettysburg Railway away from the campus, would this section of land ever have been deleted from the formal boundary of the park?

Ms. HARRISON. My opinion would be no.

Mr. SYNAR. Ms. Harrison, like all of us I am sure you have seen the repeated assertions of the park service in letters, documents, and public statements either saying or implying that this project was carefully reviewed by you and other cultural staff. Are those statements true?

Ms. HARRISON. I take issue with the amount of detail with which I had the opportunity to review it. I did not have that kind of opportunity.

Mr. SYNAR. In December 1987, Mr. Van Arsdale conducted another site visit with Bob Prosperi, who was a park historian, and then Superintendent Earnst. Why didn't you attend that meeting?

Ms. HARRISON. I was sick that day.

Mr. SYNAR. Did Mr. Van Arsdale provide then Superintendent Earnst and Bob Prosperi a map indicating the college's intentions to relocate the railroad?

Ms. HARRISON. Yes, he did.

Mr. SYNAR. At this time let me have you refer to exhibit 12, which we introduced earlier. This is a map received by the park service from college officials on December 16, 1987.

Ms. Harrison, when did you first review this December 1987 map?

Ms. HARRISON. I would have seen it probably the day after I got back from being ill.

Mr. SYNAR. But you first reviewed it well before the land exchange, didn't you?

Ms. HARRISON. That is correct.

Mr. SYNAR. Now this map shows a narrow strip of land which opens out to the left and the right near the CSX Transportation Railroad. Does it show the actual route of the proposed rail line?

Ms. HARRISON. No, it does not.

Mr. SYNAR. Does this map have contour lines indicating where the ridge is relative to the shaded area?

Ms. HARRISON. No, it does not.

Mr. SYNAR. Is this map consistent with what Mr. Van Arsdale has told us previously about the college's plans to relocate the railroad?

Ms. HARRISON. In essence, yes, because it is not really site related, so I had difficulty with where this actually was in regards to physical features that were out there at the time.

Mr. SYNAR. Ms. Lepore, in discussions with the subcommittee staff you said that in your view with the submission of this map the college had formally put the park service on notice that the western spur would be built. Can you tell us from this map where the rail line is intended to be located?

Ms. LEPORE. There is no rail line indicated on the maps.

Mr. SYNAR. So how could you say that this put the park service formally on notice?

Ms. LEPORE. I think I need to put that statement in context when I made it to Mr. McLaughlin. From the legal perspective, I was looking at whether we could file some kind of counter charge against the college.

Obviously, the lawsuit had been filed against us charging misrepresentation, and when I learned that this map had been provided to park service staff as early as 1987 and clearly it is showing the Wye formation, although there is no indication where the track is going to go within that, I felt that we were given some level of notice.

The other problem is that the property line is indicated there, and so if one were to go to any other maps that might have been in the park service's possession comparing the property line, it might have been possible to discern what the topographic implications of this were.

Mr. SYNAR. Let's talk about that, in December 1987 on that map the general tract to be exchanged is shaded. Can you tell where that shaded land is relative to Oak Ridge?

Ms. LEPORE. No, not compared to Oak Ridge.

Mr. SYNAR. All right, Mr. Engle, you are a landscape architect, aren't you?

Mr. ENGLE. Yes, I am.

Mr. SYNAR. As a landscape architect you are accustomed to working with a topographic map. Could you take this map, lay it over a topographic map of the project area, and confidently determine how this project area would relate to Oak Ridge?

Mr. ENGLE. You would have to change the scale on this map.

Mr. SYNAR. It is highly doubtful, isn't it, that you could do that?

Mr. ENGLE. This is a sketch map. I don't think it would be useful for that purpose.

Mr. SYNAR. Since there are no rail lines clearly depicted in this map, could you make a judgment as to how the western spur might affect the ridge based upon that map?

Mr. ENGLE. Not effectively.

Mr. SYNAR. Mr. Coleman, you were regional director of the mid-Atlantic office at the time in question and you signed off on this land exchange with the college, correct?

Mr. COLEMAN. Yes, sir.

Mr. SYNAR. Now, section 2(c)(3) of the Boundary Act of 1990 imposes certain duties on the Secretary of the Interior with regard to the sale and exchange of land deleted from formal park boundary.

Now, before I get into those requirements, let's just clarify the delegation of authority issue first, OK? Now, we reviewed that var-

ious delegations of the secretarial authority that the department has adopted over the years, and it appears to us that the authority to exchange publicly owned lands has been delegated with regard to the park service, at least from the Secretary to the Director of the National Park Service, and then in turn the Director's authority to exchange lands has further delegated at least down to the regional directors of the park service. Is that correct?

Mr. COLEMAN. That is my understanding.

Mr. SYNAR. All right. Does the delegation of authority flow downward even further to park service officials below the regional director level, for example, can the head of a lands division or someone in real estate at the regional office sign an exchange? Who can sign off on those deals, Mr. Coleman? Not signing off to approve it, but just signing off on the deal, who signs off on the deals?

Mr. COLEMAN. Who signs off on the deals?

Mr. SYNAR. Can anybody below you sign off on those deals? The deed?

Mr. COLEMAN. I am sorry, I just don't know.

Mr. SYNAR. Mr. Kirwan, can you sign off on it?

Mr. KIRWAN. Yes, sir, it is redelegated to the regional chief of lands to sign the deeds.

Mr. SYNAR. Now let's get back to section 2(c)(3) of the Boundary Act, which required the steps be taken to protect the park and Gettysburg battlefield historic district. Even though it was outside the formal boundary, the 7.5 acre tract, it was still owned by the park service and was still within the historic district, correct, Mr. Coleman?

Mr. COLEMAN. Yes.

Mr. SYNAR. Since you signed off on the exchange, wasn't it your responsibility to do what the act required of the Secretary, to make the exchange subject to such terms and conditions as would ensure the use of the property in the manner which would protect the park and its historic district?

Mr. COLEMAN. Yes, sir.

Mr. SYNAR. All right, at this time let me introduce for the record exhibit 27. This is a January 1993 report written by the engineer in the regional office, and is based on his site visit to the area of the excavation.

[The exhibit can be found in the appendix.]

Mr. SYNAR. According to the report, "Along one stretch of the top of the slope cut the erosion was so severe that a section approximately 75 feet in length had eroded 6 to 8 feet into the park's property."

Mr. Coleman, if you fully satisfied section 2(c)(3) requirement of the act, why did the park service approve of a plan that allowed so much erosion to occur into the park property?

Mr. COLEMAN. I think we made a mistake.

Mr. SYNAR. Since we confirmed this morning with the college witnesses that they did not even hire an engineering firm to assist planning for the construction, I guess there is no use asking if the park service approved the engineering plan prior to the signing of the exchange, did you?

Mr. COLEMAN. Not that I know of, no, sir.

Mr. SYNAR. All right. Let's review briefly the restrictive requirements contained in the quitclaim deed for the 7.5 acres deleted from the park. A, there shall be no development of the land other than the construction of the facilities illustrated on the survey plans prepared for the college; B, the proposed railway maintenance building shall not be larger than 60 feet by 160 feet and 35 feet in height; and, C, the college and its lessees shall not remove an existing stand of trees located between the proposed railroad facilities and the college.

Now, Mr. Kirwan, you and your staff developed these deed restrictions and no offense intended but you are real estate specialists, right?

Mr. KIRWAN. Yes, sir, that is correct.

Mr. SYNAR. You are not trained in cultural resources management and protection, are you?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Mr. Kirwan, we already know that you did not coordinate with the cultural resources staff, but did you at least consult with the regional engineers to discuss the railroad relocation plan and potential need for retaining walls at the ridge?

Mr. KIRWAN. No, sir. I did consult with the cultural resources staff.

Mr. SYNAR. You did?

Mr. KIRWAN. Yes.

Mr. SYNAR. Did you and your staff realize the college intended to have the cut literally go up the park's property line and virtually straight down?

Mr. KIRWAN. No, sir.

Mr. SYNAR. Then I repeat my question, Mr. Coleman. You did not meet your requirements under section 2(c)(3), correct, based upon what Mr. Kirwan has just said?

Mr. COLEMAN. That is your interpretation of it.

Mr. SYNAR. You said it was a mistake?

Mr. COLEMAN. I think we made a mistake.

Mr. SYNAR. All right. Now the Land and Water Conservation Fund Act has provisions governing intrastate land exchanges, and the regional office stated in a memo that in addition to the Boundary Act the provisions and the authorities of this other act applied to the Gettysburg exchange.

Now, as you know, one provision of the Land and Water Conservation Act requires the Secretary to determine that the land being exchanged is "suitable for disposal," is that correct, Mr. Coleman?

Mr. COLEMAN. I believe so, yes, sir.

Mr. SYNAR. Now, I understand at the time there were no specific criteria for making this judgment and still aren't, and we are going to talk about that a little later, but the act still imposes an obligation on the Secretary, so how was the "suitability requirement," Mr. Coleman, of the Land and Water Conservation Act met by the Secretary and the park service in this particular case?

Mr. COLEMAN. Well, I assumed that the restrictions, I guess you would call them, that were put on the deed would have met those obligations.

Mr. SYNAR. Is that all you did or did you do some other determination for suitability?

Mr. COLEMAN. No, sir, I mean it seems to me that if we had had certain interests in the property and they would be still able to be maintained, we should have put them in the deed restrictions.

Mr. SYNAR. Ms. Harrison, not only was suitability not determined at the exchange level, the National Park Service also did not do a determination of eligibility [DOE] for the 7.5 acres when it was being considered for deletion in the boundary study process; is that true?

Ms. HARRISON. That is true.

Mr. SYNAR. DOEs were done for some of the deleted areas but not all of them. Who wrote the DOEs?

Ms. HARRISON. I was told Jonathan Doherty.

Mr. SYNAR. An individual with no background in cultural resources, correct?

Ms. HARRISON. Correct.

Mr. SYNAR. Mr. Kirwan, you are the head of the lands division at the regional office which is primarily responsible for the handling of the real estate aspects of the land exchange. When did you receive the first survey plat or map showing the college's plan to relocate the railroad?

Mr. KIRWAN. To the best of my recollection, it was on April 7, 1989.

Mr. SYNAR. On April 7, 1989, did you travel to Gettysburg to discuss the proposed railroad relocation with Mr. Van Arsdale, and before that meeting did you meet with Superintendent Kuehn to inform him that you were meeting with the college?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Now, did Mr. Van Arsdale, who was the treasurer of the Gettysburg college, show you the maps, give you the full briefing on the college's plan to relocate the railroad and conduct an on-site visit with you and the other park officials?

Mr. KIRWAN. That is correct.

Mr. SYNAR. At this time let me refer you back to exhibit 16, which is already in the record. This is the May 14, 1989, survey plat from the college showing the location of the western spur and which includes contour lines.

Mr. Kirwan, who were the other park service officials that attended that April 7 meeting?

Mr. KIRWAN. To the best of my recollection, Bob Davidson, Jean Rapo, who was a realty specialist in my office, and Carol Fox, the superintendent's secretary.

Mr. SYNAR. Now, Mr. Davidson, Mr. Van Arsdale provided you all with a map at that April 7, 1989, meeting. Did you bring a copy back to the park for the superintendent to see or at least discuss what occurred at the meeting with the superintendent?

Mr. DAVIDSON. Yes, sir, I did. I was there representing him.

Mr. SYNAR. So you took a copy of the map back to the superintendent?

Mr. DAVIDSON. If a copy was available—this is sometime ago, and I am really having trouble with my recollection on it.

Mr. SYNAR. Mr. Kirwan, how many copies were provided?

Mr. KIRWAN. To the best of my recollection, I requested a copy from Mr. Van Arsdale. He gave me a copy. Again, to the best of my recollection, I don't think that the park had requested a copy, so I think that the park service at that point received one copy.

Mr. SYNAR. Had one copy and you were in possession of it?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Mr. Davidson, I think you are aware that former Superintendent Kuehn has stated that in 1989 he requested survey maps from Mr. Van Arsdale on three separate occasions but never received them. Were you aware of those requests at the time?

Mr. DAVIDSON. I don't recall, no, sir.

Mr. SYNAR. How many copies—I want to make this sure, we only have one copy out there, right, Mr. Kirwan, to you?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Now you have the capability of making copies of the survey plats. Did you ever provide a copy of this map to the former Superintendent Kuehn or to Assistant Superintendent Davidson or to the parks Chief Historian Kathy Harrison?

Mr. KIRWAN. I don't recall. If we had gotten a call saying send us copies of the maps, we would have sent it, but there wouldn't be any type of transmittal memorandum or anything.

Mr. SYNAR. The only way they would have gotten it is if they had to request it, correct?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Didn't the regional office need a park superintendent approval for the proposed plans of the college?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Mr. Kirwan, did you ever discuss the March 14, 1989, map that you received from Mr. Van Arsdale with Kathy Harrison or Reed Engle?

Mr. KIRWAN. No.

Mr. SYNAR. Did you get approval from Superintendent Kuehn about the proposed plans from the college?

Mr. KIRWAN. I don't know that I received. There is no written approval. I would assume that Bob Davidson would have filled the superintendent in. I wouldn't normally call Kathy Harrison or Reed Engle if they are on the park staff. At that point in time I was discussing it either with Bob Davidson or the superintendent.

Mr. SYNAR. Mr. Kuehn has told us he never signed off on the approval of the college plans.

Mr. Davidson, did you sign off on them?

Mr. DAVIDSON. No, sir.

Mr. SYNAR. Who did?

Mr. KIRWAN. I don't think there was any signoff. I mean, there is an approval for the exchange, but I don't know that there is necessarily an approval process for the plans.

Mr. SYNAR. Doesn't the park superintendent have to signify that he is in agreement with the proposal?

Mr. KIRWAN. Not that I am aware of. I think it is as a result of the boundary study which in effect is the approval for the exchange and then the subsequent legislation.

Mr. SYNAR. Did your office just assume they knew all about it and didn't have to ask any more specific details?

Mr. KIRWAN. We felt that since the park had a historian, and since we had never heard any objections from an historic standpoint, we felt there was no concern.

From an archeological standpoint, since I knew that the park did not have an archeologist on staff, I had requested that the regional cultural resources prepare a scope of work for an archeological survey, and that is what they did.

Mr. SYNAR. Now, as a result of this April 1989 meeting with Mr. Van Arsdale and the officials from the park and then the receipt of the map, were you aware at that point in time that a good chunk of the ridge would be cut off to accommodate a western spur?

Mr. KIRWAN. Yes, we were.

Mr. SYNAR. Mr. Davidson, how about you? Did you know at the time based upon the April 1989 meeting and receipt of the map at that point?

Mr. DAVIDSON. It wasn't stated in any specific terms. We had the map, we were looking at it. The contour lines didn't really mean a lot to me at the time of the meeting, so I wasn't personally aware of the extent of the cut by just looking at the map that was provided there.

Mr. SYNAR. The March 14, 1989, map, that is what you had in your possession? That is what you received the briefing on?

Mr. KIRWAN. That is correct.

Mr. SYNAR. You cannot tell from that—you could, Mr. Kirwan, but I am asking about Mr. Davidson. You couldn't?

Mr. DAVIDSON. I am not a trained engineer, it is really difficult.

Mr. KIRWAN. I would say it wasn't the map necessarily, but after reviewing the maps we went out in the field with Mr. Van Arsdale and looked at the site that was to be exchanged.

Mr. SYNAR. Mr. Davidson, were you present at that briefing?

Mr. DAVIDSON. I don't recollect being present at that, no.

Mr. SYNAR. Mr. Coleman, were you there?

Mr. COLEMAN. No, sir.

Mr. SYNAR. Mr. Kirwan, was Bob Davidson there?

Mr. KIRWAN. Yes, sir.

Mr. DAVIDSON. Oh, I was there.

Mr. KIRWAN. Carol Fox, the superintendent's secretary, Bob Davidson, the superintendent was unable to go to the meeting even though we had a briefing prior—

Mr. SYNAR. Well, Carol Fox told the subcommittee that she does remember a discussion about the excavation of the ridge.

Mr. Davidson, once again, do you remember a discussion since you were there according to Mr. Kirwan?

Mr. DAVIDSON. I think there was a realization at the time that that railroad couldn't be placed without any cut and fill. I think there was an understanding that some soil would have to be moved in order to put that railroad in. I didn't have an understanding—

Mr. SYNAR. Did you discuss that with your staff?

Mr. DAVIDSON. I was there representing the superintendent at the time.

Mr. SYNAR. Did you discuss it with Ms. Harrison or Mr. Engle?

Mr. DAVIDSON. I don't think Mr. Engle was at the park at the time.

Mr. SYNAR. Did you discuss it with Ms. Harrison?

Ms. HARRISON. I don't think so. I don't recollect doing that.

Mr. SYNAR. Why not, Mr. Davidson?

Mr. DAVIDSON. I think my understanding was that we would eventually have a copy of this map in our possession so that we could sit down and with some specifics in front of us go about the business of evaluating what their proposal was. At the time there was only one map and we didn't have the opportunity to take that with us.

Mr. SYNAR. It didn't happen that way, though, did it? Ultimately it didn't happen that way, did it?

Mr. DAVIDSON. No, sir.

Mr. SYNAR. Mr. Bearss, on November 18, 1989, did you participate in a tour with Congressman Vento and Congressman Goodling?

Mr. BEARSS. Yes, sir.

Mr. SYNAR. On the proposed land exchange?

Mr. BEARSS. Yes, sir, we did a 1-day driving tour, windshield tour of the various lands involved in the boundary study.

Mr. SYNAR. At this time I would introduce in the record exhibit 23, if you will look in the books in front of you. It is the itinerary for the tour on November 18, 1989.

I refer you to the back page. According to this itinerary the park service was also represented on the tour by Regional Director Coleman, Acting Superintendent Frank Deckert, Assistant Superintendent Bob Davidson, and Regional Park Planner Jonathan Doherty. We have confirmed that all these parties were present.

[The exhibit can be found in the appendix.]

Mr. SYNAR. Mr. Bearss, according to this itinerary, the tour included a 15-minute stop to discuss the proposed land exchange with the college. The discussion was held near the observation deck at the north end of Oak Ridge, not near the railroad cut area. And the discussion focused on the scenic easement, correct?

Mr. BEARSS. Correct, sir.

Mr. SYNAR. Was the college's proposal to build a western spur through Oak Ridge discussed?

Mr. BEARSS. The only mention of the relocation of the railroad was a very general discussion as a followup on the language in the land study that said the boundary would be on the exchange, it would be located near or adjacent to the east side of the park boundary.

Mr. SYNAR. Now, you supported the deletion of the 7.5 acres based on what you saw and heard from the tour, correct?

Mr. BEARSS. What I saw in the plan and what I saw in the tour.

Mr. SYNAR. In your interview with the subcommittee staff, you said that Dr. Harry Pfanz, whose statement was introduced in the record earlier, collaborated with you on reviewing the proposed addition and deletions to the park, is that correct?

Mr. BEARSS. That is correct.

Mr. SYNAR. In his statement Dr. Pfanz said the excavation of the Oak Ridge was an outrage. Do you share that opinion?

Mr. BEARSS. I would share that opinion, but when he and I reviewed the plan, that is in May, I incorporated his and my languages in that May 1989 review that he and I collaborated, and of course at that time we had no knowledge and not until John

O'Donnell called me up in either the last week of January or the first week of February 1991.

Mr. SYNAR. Mr. Bearss, was Mr. Van Arsdale from the college present on the site on your visit in November 1989?

Mr. BEARSS. I do not recall, sir.

Mr. SYNAR. Well, according to the college Mr. Van Arsdale informed the tour participants of the college's plans to cut through the railroad. Are you quite certain that there was no discussion of the western spur line cutting through the Oak Ridge?

Mr. BEARSS. All I recall, the main thing they were focusing on that I remember is the trees.

Mr. SYNAR. All right. For the record, I might remind everyone, Mr. Kostmayer, who was present at another briefing, says there was no discussion, and Mr. Van Arsdale does not recall being there, so we have a very interesting situation.

Mr. BEARSS. I do not recall Mr. Van Arsdale being there. I remember—

Mr. SYNAR. Was the college's intention to build a railroad maintenance building on the 7½ acres near the western spur discussed?

Mr. BEARSS. I do not recall that.

Mr. SYNAR. Mr. Coleman, Mr. Davidson, do you agree with Mr. Bearss' recollection of that discussion?

Mr. COLEMAN. I don't believe Mr. Van Arsdale was there. I don't recall him being there. There was no discussion of any of the Oak Ridge, the land being carved away.

Mr. SYNAR. Or the maintenance building?

Mr. COLEMAN. I knew something about a maintenance building sometime, but I don't know when that first came up.

Mr. SYNAR. Mr. Davidson, what is your recollection?

Mr. DAVIDSON. My recollection is it was a very general discussion. In fact, I don't believe we had a copy of the existing map that would have been available at the time during the briefing.

Mr. SYNAR. But you had the March 14, 1989, map with you at that point, did you not?

Mr. DAVIDSON. On the site? During that discussion?

Mr. SYNAR. You were aware of the map, though?

Mr. DAVIDSON. We were aware of the map.

Mr. SYNAR. And that a western spur would be built? You knew that when you went on the tour. You had the map, you see the western spur, and you were there in April.

Mr. DAVIDSON. I guess I must have known then, yes.

Mr. SYNAR. Mr. Doherty informed the subcommittee that he does not recall the specifics of the discussion about the proposed land exchange in the November 1989 meeting, but is quite certain that at the very least he explained that the railroad would be relocated at the base of Oak Ridge.

Moreover, Mr. Doherty said to this subcommittee in its investigation he does not remember Mr. Van Arsdale being at the site.

Now, as I said, Mr. Kostmayer previously has noted that he went down on a separate tour November 29, 1989, and was not informed that the railroad would cut through the ridge.

Finally, at this time I would like to introduce into the record a letter statement from Andrew McElwaine, a former staffer of Senator Heinz of Pennsylvania, dated May 7, 1994.

[The information can be found in the appendix.]

Mr. SYNAR. Mr. McElwaine was in the park on October 26, 1989 for a centennial celebration commemorating President Eisenhower. He states that he met with and talked to officials from the park service and the college about various boundary issues, including the proposed land exchanges and the railroad relocation project.

However, Mr. McElwaine states that the land exchange was only briefly touched on and that based upon earlier discussions of the land exchange in particular "at no time was I given any information that would have led me to suspect that the Oak Ridge would have been significantly altered by the land exchange in any way."

Mr. BEARSS, when and how did you first become aware of this excavation of Oak Ridge?

Mr. BEARSS. I became aware when John O'Donnell, a staffer on then Congressman Kostmayer's staff, called me. It would be either in late January or early February 1991.

Mr. SYNAR. When did you first see the ridge after the excavation?

Mr. BEARSS. I first saw it that summer, John said he wanted me to go up there with him and Congressman Kostmayer, and they never called back.

Mr. SYNAR. Did you go that summer and see it?

Mr. BEARSS. I saw it that summer.

Mr. SYNAR. So you were informed of it in the fall of 1991 and you first learned of the excavation in 1992—no, January 1991—

Mr. BEARSS. I learned of the excavation in late January, the first week of February 1991 and first saw it in the summer of 1991.

Mr. SYNAR. Why didn't you travel to the park to examine the site when you first heard about the excavation?

Mr. BEARSS. Because I was waiting for Mr. Kostmayer to lead the expedition up there. The park service is somewhat of a "you go when the task force is going." I was led to believe with John that there would be a number of us going up, and John never called me back.

Mr. SYNAR. Did the park service officials either at the park or the regional office seek your opinion or input on the historical significance of the tract of land?

Mr. BEARSS. The only time would be earlier when we were setting criteria, talking about various areas that in the initial meetings of the boundary study.

Mr. SYNAR. Were you aware that the park service was touting an official position that the tract of land had no historical significance?

Mr. BEARSS. Not until I saw it in print.

Mr. SYNAR. When?

Mr. BEARSS. In print would be in the weeks following 19—in the weeks following my call from Mr. O'Donnell.

Mr. SYNAR. Did you protest any—

Mr. BEARSS. I called the staff, I called—

Mr. SYNAR. What steps did you take to stop them asserting that there was no significant historical significance?

Mr. BEARSS. Well, by telephone but not in conversation, not in official document.

Mr. SYNAR. Why not?

Mr. BEARSS. Well, probably because of other land exchanges I have been involved in earlier.

Mr. SYNAR. What does that mean—you don't want to write anything down?

Mr. BEARSS. I had written down other ones and they did not have too much, particularly on Petersburg and Vicksburg, a long time ago, that was not——

Mr. SYNAR. So are you trying to tell me that when you make an objection on the historical significance that it just goes off into never-never land?

Mr. BEARSS. On a few times it has and sometimes it counts, sometimes it wins.

Mr. SYNAR. So it was your experience that it didn't matter what you found?

Ms. Harrison, is that the case? Is that your experience, too?

Ms. HARRISON. I have to agree with Mr. Bearss.

Mr. SYNAR. Do you want to explain Vicksburg and Petersburg for the committee?

Mr. BEARSS. Well, Vicksburg took place in 1964. There was a land exchange at Vicksburg in which there was a deletion, rather it was a deletion of the southern extension of the Vicksburg park south of Fort Garrett in return for allowing the park service to convert the roads of Vicksburg National Military Park to one way and also to pave Union Avenue.

There were a number of the staff opposed it, but they wrote into the legislation—I am sure Brian has checked it—that the southern part of the park that was being deleted would be maintained in a park-like manner, and almost the same situation existed within a month after the deletion there, as we found out had happened at the——

Mr. SYNAR. Mr. Bearss, the natural question for you is, why do we pay for you as a historian in the National Park Service if we aren't going to listen to you?

Mr. Kennedy, why do we pay for these people if what he is telling us is true, you don't listen to him when he does tell you?

Mr. KENNEDY. We pay for them because they are competent historians. The question is, why don't we listen to them, and that requires that you structure your decisionmaking process with necessary sign offs so that competent scholars sign off on matters about which they are competent. If they don't, you shouldn't proceed. That seems to me sort of sensible. You have got to have some folks like this who know something around and when they are around, the system should be so structured, whatever the legislation is, so you should pay attention to competence.

Mr. SYNAR. Ms. Harrison, do you find this demoralizing?

Ms. HARRISON. Yes, very.

Mr. SYNAR. Mr. Bearss, what you just told the subcommittee under oath is that this is not the first time that the park service has failed to protect historic property, is that correct?

Mr. BEARSS. It existed at the time of the Vicksburg land exchange in the middle 1960's.

Mr. SYNAR. Mr. Kirwan, on January 30, 1990, Boyd Sponagule of your office received a revised survey map from the college, correct?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Let me enter into the record exhibit 24, which is a March 1989 survey plat as revised on January 19, 1990, and which was submitted by the college to the park service on March 30, 1990. It is right over there. Do you see it?

[The exhibit can be found in the appendix.]

Mr. SYNAR. Now, this second survey plat was revised to show a proposed railroad maintenance building and a change in the curve of the western spur, wasn't it?

Mr. KIRWAN. That is correct.

Mr. SYNAR. I would note for the record we are now talking of a timeframe 15 months after the last public meeting on the boundary study and well after the congressional hearing of the proposed act and the development of the plan was still evolving.

Now, Mr. Kirwan, I want to talk about what caused the college to revise this survey plat. Wasn't there a meeting between Boyd Sponagule and the college in September 1989 and at that time didn't Mr. Sponagule explain that the park service intended to restrict the college's use of this tract to the railroad purposes only?

Mr. KIRWAN. That is correct.

Mr. SYNAR. In fact, sometime after that meeting didn't you write a letter to the college emphasizing that the park service would allow them to use this tract of land for railroad purposes, but not for anything truly inappropriate?

Mr. KIRWAN. That is correct.

Mr. SYNAR. So any railroad-related purposes including a maintenance building, standing 35 feet and measuring 160 feet by 60 feet, was acceptable to you?

Mr. KIRWAN. Originally the intent was simply to convey to the college the roughly 7 acres of land without any restrictions. As we got into the negotiations, we felt that the land should have some restrictions. We knew that the building was to be allowed on the parcel of land, and we wanted the map to show what structures would be allowed to be——

Mr. SYNAR. You are not a cultural resource specialist. I want to get that straight again.

Mr. KIRWAN. That is correct.

Mr. SYNAR. Did you consult with the cultural resource staff from the regional office or the park?

Mr. KIRWAN. I consulted with the park, again with the superintendent.

Mr. SYNAR. This is specific. Who specifically did you consult with at the park?

Mr. KIRWAN. It would have been the superintendent, I guess Dan Kuehn or I forget, José, depending upon the timeframe, Bob Davidson.

Mr. SYNAR. Did you ever show the map to Superintendent Cisneros?

Mr. KIRWAN. I don't recall.

Mr. SYNAR. How about Boyd Sponagule, did he show it to him?

Mr. KIRWAN. I have talked to him and at least it was his impression that he did, but again there is no record of that type of a——

Mr. SYNAR. Dr. Orr, are cultural resources staff at the regional office often left out of land exchange and other resource transactions?

Dr. ORR. Occasionally.

Mr. SYNAR. What does that mean? Define "occasionally."

Dr. ORR. Well, it means that in my experience there is no procedure that I can recall where we are as a matter of fact involved in all land exchanges, land easements. I am well involved with the Yorktown land easement, but in this case unfortunately——

Mr. SYNAR. Why were you left out on this one?

Dr. ORR. I don't know.

Mr. SYNAR. Is this an anomaly?

Dr. ORR. No, it is not anomalous, I guess it is the responsibilities that the people have above me, and their determination whether or not they want to use me. There is no formal instrument, as I say. We are constantly meeting with the land exchange people.

Mr. SYNAR. I am interested in what you are telling me. Don't lands people, the cultural and the planners, get together to discuss these things?

Dr. ORR. Yes.

Mr. SYNAR. Usually? Or is that an anomaly, too?

Dr. ORR. The question was directed to me. I guess I can't answer for some of the other staff, but I am not typically involved in those kinds of meetings. That is all I can say.

Mr. SYNAR. Are there meetings like that?

Dr. ORR. Yes, I am sure there are.

Mr. SYNAR. In this particular case that kind of meeting did not occur, did it?

Dr. ORR. We had a meeting—the one I remember because I remember discussing this when this came up, way back in 1987, September 15, I believe, where we argued strongly that we conduct a survey of all these land exchanges. I remember the first meeting I went to. I think Reed was there. I am not sure; I believe Reed was there.

Subsequent to that, I was involved in no onsite meetings that I recall. I am sure I wasn't. And I don't recall any meetings prior to when Doug Campana came to me with a map, I guess, on May 10.

Mr. SYNAR. Let's get back on track here. In late 1989 the college divulged its plans to put up a maintenance building as well, and you, Mr. Kirwan, requested a new survey plat to show where it was going to be located, right?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Prior to that land exchange, had you ever been involved in a project involving a railroad?

Mr. KIRWAN. Yes, sir.

Mr. SYNAR. Where?

Mr. KIRWAN. Involved with them numerous places, here in Washington with CSX, New River Gorge with CSX, Conrail, other parks.

Mr. SYNAR. Isn't it true that you know that it is absolutely necessary to understand the effects of the excavation and to have a profile of that, and if so, why didn't your office require profile lines to be drawn on the survey plats, knowing the rail line was going to be constructed?

Mr. KIRWAN. The purpose of the plats was to define the land that was to be conveyed to the college. At the time that we were instructed to proceed with the exchange, it was simply to convey to the college——

Mr. SYNAR. Yes, but you were putting restrictions on the land on how it could be used. That would be the natural extension of that.

Mr. KIRWAN. But restrictions primarily to make sure that only one building, the maintenance building would be allowed and the railroad tracks were to be allowed, the locations of them.

Mr. SYNAR. So whatever they did with the land beyond that, you just didn't care, did you?

Mr. KIRWAN. No, I wouldn't say that, but the intent or at least the initial thing was simply to exchange the land, the 7 acres for the easement over the 46 acres on the playing field.

Mr. SYNAR. I am sure you are familiar with the boundary study and the draft environmental assessment of August 1988, Mr. Kirwan, and specifically the section of the study that discusses the proposed land exchange with the college. In that section of the boundary study's discussion of the proposed land exchange, was there any reference at all to the western spur of the railroad maintenance building to be given to the college, any reference?

Mr. KIRWAN. Not that I recall, no.

Mr. SYNAR. You must have realized that the plans before you—first the March 1989 plat and then the plat as revised in January 1990—were different from the initial ones proposed?

Mr. KIRWAN. I don't recall that I had seen the earlier ones. The first one I saw was the March 1989.

Mr. SYNAR. But you realized they were different, did you not, in what was stated and what the discussions were that were going on?

Mr. KIRWAN. I don't know because—no, I don't know what the plans showed prior to that date, whether they were different or the same.

Mr. SYNAR. Did you or any member of your staff ever provide a copy of either the March 1989 or the revised 1990 maps to the regional cultural resources staff?

Mr. KIRWAN. I don't recall.

Mr. SYNAR. Dr. Orr, you are the chief archaeologist at the regional office. Did you or any member of your staff see the maps prior to the land exchange being executed?

Dr. ORR. Not that I recall.

Mr. SYNAR. Did you or any member of your staff ever see the maps showing the western spur line and the proposed railroad maintenance building?

Dr. ORR. I guess the map that Doug Campaña got on May 10th, I don't believe it showed that. I am trying to recall.

Mr. SYNAR. When and where did you see such a map?

Dr. ORR. From Doug Campaña.

Mr. SYNAR. What date was that?

Dr. ORR. I believe May 10.

Mr. SYNAR. What year?

Dr. ORR. I think it was 1990. I mean 1989.

Mr. SYNAR. Was it May or October?

Dr. ORR. No, it was May.

Mr. SYNAR. So what you are saying is you never saw a map with or without all of the important contour and profile lines showing the location of the western spur or the maintenance building before the land exchange, is that what you are telling me?

Dr. ORR. Well, the only map——

Mr. SYNAR. Was that a tract map you were referring to?

Dr. ORR. Yes, the only map I saw was the tract map I received from the service.

Mr. SYNAR. The answer was you saw absolutely nothing?

Dr. ORR. I want to be careful.

Mr. SYNAR. When was the first time you saw the actual survey plat?

Dr. ORR. When Doug Campaña showed it to me.

Mr. SYNAR. The actual survey plat.

Dr. ORR. I think it was when Brian showed it to me.

Mr. SYNAR. When our staff met with you in March of this year?

Dr. ORR. I believe so.

Mr. SYNAR. That is the first time you saw it?

Dr. ORR. I believe so.

Mr. SYNAR. Mr. Kirwan, to your knowledge did anyone from the military park ever request a copy of the actual survey maps that you received from Gettysburg College?

Mr. KIRWAN. I don't know. I don't recall.

Mr. SYNAR. You would have given it to them had they requested it?

Mr. KIRWAN. That is correct.

Mr. SYNAR. But you don't think anybody requested it?

Mr. KIRWAN. I don't know.

Mr. SYNAR. Even a member of the public could get them if they were to request them, right?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Did the park service notify GBPA or any other interested party that you had finally received a map indicating the college's intentions of relocating?

Mr. KIRWAN. I don't know that there was any formal notice. I know that on occasion, I and the superintendent would meet with officials of GBPA concerning what was line acquisition in the park that they were involved in, and we may have had discussions about that, but I don't recall certainly that I ever furnished a map.

Mr. SYNAR. Mr. Cisneros, you were superintendent at the time. Did you notify GBPA?

Mr. CISNEROS. No, sir.

Mr. SYNAR. Why?

Mr. CISNEROS. I was not aware there was any need to notify GBPA.

Mr. SYNAR. So the intentions of the relocating of the railroad didn't trigger you to think that you might want to inform them?

Mr. CISNEROS. No, sir.

Mr. SYNAR. Without some official notice, how could anyone have known that they had received a map from the college? I mean, how is the public to know that they have it unless you all tell them you have got it?

This is a tossup question, Mr. Kirwan.

How was the public to know to ask for it if you didn't tell them you had received it?

Mr. KIRWAN. I think that goes back to developing the procedures of how to make sure that the public is informed, and again——

Mr. SYNAR. But in this case they were not informed, were they?

Mr. KIRWAN. That is correct.

Mr. SYNAR. Mr. Kirwan, to your knowledge did Kathy Harrison, Reed Engle or Dr. Orr ever see a survey plat showing the western spur and railroad maintenance building prior to the execution of the exchange?

Mr. KIRWAN. I don't know.

Mr. SYNAR. Kathy Harrison, did you ever see it, Ms. Harrison?

Ms. HARRISON. No, sir, not prior to the exchange.

Mr. SYNAR. Mr. Engle, did you see it prior to the exchange? We know Dr. Orr didn't.

Mr. ENGLE. No, we didn't. In fact, we asked for it twice, I believe.

Mr. SYNAR. You did what?

Mr. ENGLE. We requested exhibit F on two separate occasions.

Mr. SYNAR. Did you get it?

Mr. ENGLE. No, we did not.

Mr. SYNAR. Who did you ask?

Mr. ENGLE. Can I ask Kathy? She would probably know the answer to that.

Mr. SYNAR. From whom did you all request it?

Mr. ENGLE. We reviewed—you haven't discussed this yet, so maybe I am putting the cart—

Mr. SYNAR. We will get there. I need to know from whom you requested the maps that didn't give them to you.

Ms. HARRISON. Initially, Reed, they weren't requested as attachment F. We were requesting them before the easement terms came down, and it was just made as a general question.

Mr. SYNAR. From whom?

Ms. HARRISON. The first time we asked the question it was in what we call management team meeting to upper management. It would have been either to the superintendent or the assistant superintendent.

Mr. SYNAR. Ms. Harrison and Mr. Engle, did you request to see a copy—I want to get this straight—did you request to see a copy of the survey prior to the land exchange?

Ms. HARRISON. Yes, sir.

Mr. SYNAR. Mr. Engle.

Mr. ENGLE. Yes, sir.

Mr. SYNAR. Did you ask Bob Davidson in the presence of someone for a copy of that map?

Ms. HARRISON. Yes, sir.

Mr. SYNAR. Who?

Ms. HARRISON. Carol Fox, for one.

Mr. SYNAR. When did you make that request?

Ms. HARRISON. I think both times that they were made were in meetings.

Mr. SYNAR. When?

Ms. HARRISON. The first time it would have been made would have been when we were first notified that they were beginning to work on easement terms for this tract, and it would have been either August or July 1990.

Mr. SYNAR. Did you request these maps when you first saw the regional officer's scope of work for the archeological study?

Ms. HARRISON. No, sir, I didn't know such a map existed.

Mr. SYNAR. Did Mr. Davidson or Mr. Cisneros provide you with a map?

Ms. HARRISON. Not before the exchange.

Mr. SYNAR. Mr. Davidson, Mr. Cisneros, why did you not provide her with a map as the historian?

Mr. CISNEROS. I am not aware of any request to me personally about the map. We have a map room, an open room that is freely available, accessible to everyone and anyone who wants to see the maps. Our cultural resource people, if anyone else had the access to them, all they would have had to have done is go in there and look for the maps if in fact they were there, but no one asked me personally for a copy of any map.

Mr. SYNAR. Was there a map in there, Ms. Harrison, if you had asked for it?

Ms. HARRISON. I don't know, sir. I don't know.

Mr. SYNAR. When is the very first time you got the map?

Ms. HARRISON. February 1991.

Mr. SYNAR. Was that after Mr. Cisneros and Mr. Davidson had to secure a map for you?

Ms. HARRISON. I am sorry?

Mr. SYNAR. Wasn't it only after they helped you secure a map that you could get a copy of it?

Ms. HARRISON. I got my copy from Mr. Davidson. It was in my mailbox.

Mr. SYNAR. So you got it in February 1992, right?

Ms. HARRISON. 1991.

Mr. SYNAR. 1991. How long after the first request?

Ms. HARRISON. About 6 months.

Mr. SYNAR. Mr. Davidson, why so long?

Mr. DAVIDSON. My recollection at the time, this map was going through a number of various stages, and I really can't remember.

Mr. SYNAR. You couldn't trust Ms. Harrison with this stage of the map?

Mr. DAVIDSON. No, no.

Mr. SYNAR. You couldn't trust her?

Mr. DAVIDSON. No, I didn't agree with your statement.

Mr. SYNAR. Why couldn't you give her what was there at that stage?

Mr. DAVIDSON. If I had a copy of the map she was requesting at the time, I would have given it to her. I had no reason to withhold the map, if she asked me for the map.

Mr. SYNAR. She just said she asked, didn't you hear her?

Mr. DAVIDSON. If I said I didn't have the map at the time. That was the truth. I didn't have the map at the time. There were some occasions where we didn't receive maps instantly. Eventually if we got a copy, I would announce in the team meeting.

Mr. SYNAR. Was that map in the park anywhere?

Mr. DAVIDSON. I believe that we had copies, copies of most of the maps, the five or six different versions of it in the map room. That was my recollection.

Mr. SYNAR. Was it in the map room?

Mr. DAVIDSON. Yes, sir, it was a room between the superintendent's office—

Mr. SYNAR. Did you inform Ms. Harrison it was in the map room and she could go there to get it?

Mr. DAVIDSON. I don't recollect doing that. I recollect one time announcing that a map had been received, and it was available in the map room. If we only had one copy of it, we wouldn't circulate that for fear of it getting misplaced. We would leave it in the map room for view there.

Mr. SYNAR. Was this before or after the exchange, Mr. Davidson, that you notified the staff where the map was?

Mr. DAVIDSON. There was one occasion after the exchange that—

Mr. SYNAR. What about before? What good does it do after the exchange, Mr. Davidson?

Mr. DAVIDSON. It doesn't. At the time of the final review of this exchange, when the archaeological study was being prepared and historical review—in fact, the contractor called me and asked who in the park they should deal with in terms of historic resources, and I referred them to Kathy, and I assured them during this final review and archaeological survey that the parcel under consideration would be part of that review.

So I did make an effort in the final stages of this thing to get Kathy involved. In fact, I insisted that they contact her and deal with her in terms of the historic significance of the tract.

Mr. SYNAR. We are going to get there, but let me inform you that we spoke to Carol Fox, who was the secretary of former Superintendent Kuehn. She said she was quite certain that Ms. Harrison and Mr. Engle did not have a map when it was critical for them to have it. And I think that says volumes about why we are here today.

Mr. Cisneros, you arrived as superintendent of Gettysburg in March 1990, and by that time, the park service also had a second revised survey plat. Did you see the January 19, 1990, revised map prior to the execution of the land exchange in September 1990?

Mr. CISNEROS. No.

Mr. SYNAR. Why not?

Mr. CISNEROS. I did not have an occasion to need to look at it. Suffice to know that this boundary study process that had taken several years was now in the end of process—legislation in Congress pending approval. Everything had been done that needed to be done, and I felt no need for me to get involved. Everything had been done at that point, as far as I was told.

Mr. SYNAR. You weren't concerned about the specific plans for development at all, that you were new and you were going to have to implement them?

Mr. CISNEROS. I was under the impression that everybody before me, through superintendents, regional director, planning team, number of public meetings had gone over all this ground in great depth before I came in.

Mr. SYNAR. I want to get this straight, Mr. Cisneros. You let this land exchange go through without any review by yourself?

Mr. CISNEROS. Yes, sir.

Mr. SYNAR. Do you think you met your responsibility as superintendent of that park?

Mr. CISNEROS. I met the responsibility of finalizing a long-term process that had taken several years and was now at the point of being implemented.

Mr. SYNAR. Mr. Kennedy, I am coming to you later. Did he meet his obligation and responsibilities of what you expect from a superintendent of a park by that action?

Mr. KENNEDY. Mr. Chairman, I don't want to respond to that question. I don't think my judgment after the fact, with the complexities facing this superintendent, is an intelligent one.

Mr. SYNAR. Let me ask you this: Do you expect your superintendents to review the detail of land exchanges before they sign off on them?

Mr. KENNEDY. Yes, sir. And it seems to me in that—when they do so in the presence of stipulated guidelines that make it essential that they do so, because they are expected to, then indeed we have in place both regulations and structure to assure that it occurs; but I prefer not to comment retrospectively on the behavior of my—

Mr. SYNAR. Mr. Coleman, did you ever see the map before the land exchange?

Mr. COLEMAN. No, sir.

Mr. SYNAR. But you signed off on it, Mr. Coleman?

Mr. COLEMAN. Yes, sir.

Mr. SYNAR. Let me put in the record exhibit No. 25.

[The exhibit can be found in the appendix.]

Mr. SYNAR. This is a July 20, 1992, letter from Robert McQuaide, an attorney for the college, to Ms. Lepore, concerning certain requests she has made for information. In discussing part of the survey plan of record in the question of additional siding tracks, Mr. McQuaide states:

I would remind José Cisneros that he, Mac Heebner, Van (Arsdale) and I had a meeting, at his insistence, on February 11, 1991, wherein he raised several concerns about the (relocation) project. One of the concerns he expressed related to the number of sidings. We said that the number and the configuration of tracks came right from the agreed upon plan. He then pulled from his file a copy of the plan and confirmed to himself and to us that the number and configuration of tracks, as built, conform to the agreed upon plan.

Now, Mr. Cisneros, the recorded plan being discussed here and the one he says you pulled from the file is the same as the survey I have been talking about. You apparently had it in your file. Did you see the plan before or after the deed was executed?

Mr. CISNEROS. If we are talking about the recorded plan, I saw them after the deed was signed.

Mr. SYNAR. OK. Why didn't you provide these maps to your cultural resources staff so they could review in detail the projects to determine precisely what was going to affect the park?

Mr. CISNEROS. I am repeating myself.

Mr. SYNAR. I know. I want to hear it one more time.

Mr. CISNEROS. This is a long-term process that had been ongoing, with most of my then staff involved in it to some degree. Coming in as a new superintendent, I had to make certain assumptions and one was that they knew all they needed to know about it.

Mr. SYNAR. Let's turn to Mr. Davidson since, in addition to being the assistant park superintendent, you were also the chief compliance officer at the park. As the chief compliance officer, Mr. Davidson, weren't you required to determine whether the railroad project

or the undertaking to be implemented differed materially from what was discussed and contemplated in the boundary study?

Mr. DAVIDSON. The compliance process at the park level wasn't quite that sophisticated.

Mr. SYNAR. But you agreed with your obligation?

Mr. DAVIDSON. I am not sure that—of that obligation, sure.

Mr. SYNAR. Mr. Cisneros said he just checked off because everybody had been working on it. You were there. You had an obligation not only as assistant park director, but as compliance officer, to see that if any material changes were done, they were complied with; and I would even suggest, to tell the superintendent of those changes.

Now, did you meet your obligations as compliance officer, given the material changes, from the boundary study and on? Did you or did you not?

Mr. DAVIDSON. My role as a compliance officer at the park level was primarily to keep track of assessment of effect [nicknamed "triple X"] forms that were prepared.

Mr. SYNAR. I am on my way right there. Mr. Cisneros, as the park superintendent, and Mr. Davidson, as the chief compliance officer, weren't you required to prepare and sign off on a form within the park called "triple X"?

Mr. CISNEROS. I was not aware at the time that this was necessary. The section 106—

Mr. SYNAR. Don't the NPS-28 management guidelines that were in place at the time require that?

Mr. CISNEROS. They specify that a "triple X" may be prepared at the park, at the regional office, or a central office. It was my assumption, since the section 106 report had been done at the regional office, that any additional clearance requirements would also be done by the regional office. Absent that, we had to assume that everything was—

Mr. SYNAR. Where was the resource, Mr. Cisneros?

Mr. CISNEROS. The resource was the park, but we were not doing the planning, sir.

Mr. SYNAR. According to Diane Jacox, the chief compliance officer at the mid-Atlantic regional office, the park service must prepare a "triple X" for every undertaking, particularly for those undertakings which were initially proposed in the park planning document.

Now, the boundary study was a form of a planning document. Did the park prepare a "triple X" form for this proposed railroad relocation project?

Mr. CISNEROS. No.

Mr. SYNAR. Mr. Davidson, during your time at Gettysburg, was the park as diligent as this in its preparation of these forms?

Mr. DAVIDSON. For normal park decisions, in terms of the types of activities we did on a day-to-day basis, I think Gettysburg probably did a very good job of preparing those types of forms. I think probably we submitted more of those than any other park in the region.

We had a process that I was involved in putting this together and—

Mr. SYNAR. So you—

Mr. DAVIDSON. I think we did a fairly good job of doing that kind of thing on routine types of decisions.

Now, for this particular type of activity, I guess my assumption was that since this had been subject to all sorts of reviews and was part of legislation that Congress had passed, that essentially that responsibility had been met.

In addition, part of the reason we do "triple Xs" is for the park to supply the regional office information they need to review our decisions; and since this project, near the end of it, was almost entirely done at the regional level, I assumed that they had the information they needed to make their final judgment on this exchange.

Mr. SYNAR. I find that interesting, because I have two memos—one dated August 22, 1984, and one that was prepared by a former park archaeologist and the other dated September 10, 1984, prepared by Dr. Orr—that State park planning within the park, including the preparation of "triple X" forms, is inadequate.

At this time, I would like you to look and introduce into the record exhibits 37 and 38 for these two memos.

[The exhibits can be found in the appendix.]

Mr. SYNAR. Dr. Orr, isn't it true that Gettysburg's compliance with cultural resource management was so poor that the regional office conducted a special investigation at the park?

Dr. ORR. I—gee, I don't recall that. If somebody did it here, what is it—

Mr. SYNAR. Mr. Engle, isn't that correct?

Mr. ENGLE. There was an operation evaluation to deal with cultural resources in the park.

Mr. SYNAR. Ms. Harrison, did you attempt to initiate a "triple X" form for the land exchange with the college?

Ms. HARRISON. I didn't formulate one, but I inquired about the need for one.

Mr. SYNAR. Why wasn't that form prepared, then?

Ms. HARRISON. I was informed at that time—this was after the boundary legislation had been passed—that the land had already been deleted and was therefore no longer our property.

Mr. SYNAR. It wasn't needed anymore?

Ms. HARRISON. It was not necessary, and that Congress passed legislation; therefore, no compliance was necessary.

Mr. SYNAR. I want to ask you about that because you all are hanging your hat on us. We didn't waive all these guidelines, did we, Ms. Harrison?

Ms. HARRISON. No, you did you not, not in my opinion.

Mr. SYNAR. Under NPS-28 guidelines, you are required to prepare separate studies on cultural and historic resources that affect this undertaking action. Correct, Mr. Engle?

Mr. ENGLE. Yes.

Mr. SYNAR. Ms. Harrison.

Ms. HARRISON. Yes.

Mr. SYNAR. Dr. Orr.

Dr. ORR. Yes.

Mr. SYNAR. Were these assessments done or not?

Ms. HARRISON. Not for history.

Mr. ENGLE. We were reviewing, the day the deed was signed, the second round of easements on that property. I had just finished the

review of the quitclaim deed easements, and Kathy was in the process of reviewing them. We made a phone call to Carol Fox again and said, could we please have exhibit F, because we were doing our second round of reviews on this easement and still do not have a property? And she said, don't bother because José is going over to sign the deed this afternoon for the transfer.

We could not do the compliance or studies until we knew what the terms of the easement on that property were. And it was too late to do it.

Mr. SYNAR. Dr. Orr.

Dr. ORR. That was essentially the case. I wanted to add on, the exhibit that you have in the files; to give it some history, that was 1984 at Rose Farm. My experience in the early 1980's, the park really needed a lot of help in cultural resources and in archaeological sensitivity. We corrected that, ironically enough in the mid-1980's, and in recent years—recent years, the “triple Xs” when we get them, when we get them from Kathy especially, are excellent.

Mr. SYNAR. It didn't happen here, did it?

Dr. ORR. It did not happen.

Mr. SYNAR. So it wasn't corrected, was it?

Dr. ORR. Well, I guess not.

Mr. SYNAR. I want to make sure Mr. Davidson was the one who told all three of you that this didn't have to be done. Correct?

Ms. HARRISON. I was told that, yes, sir.

Mr. SYNAR. Mr. Engle.

Mr. ENGLE. I will have to defer to Kathy on that.

Mr. SYNAR. Mr. Coleman, did the boundary act specifically waive the park's responsibility to comply with all applicable statutes and regulations pertaining to the assessment of the effect on historic and cultural resources?

Mr. COLEMAN. No, sir.

Mr. SYNAR. Dr. Orr, you or your staff prepared the scope of work specifying that about 60 shovel tests were to be conducted along the center line of the western spur and in the area proposed to be excavated for the railroad maintenance building; is that correct?

Dr. ORR. Yes.

Mr. SYNAR. You previously testified that neither you nor any member of your staff ever saw a railroad survey plat. How did you know about the western spur and the railroad maintenance building if you never saw a survey plat?

Dr. ORR. Well, that was when we got the map from the lands—

Mr. SYNAR. So you were told by the lands staff?

Dr. ORR. Right.

Mr. SYNAR. Did you ever request a copy of the survey plat which the land's staff had?

Dr. ORR. We didn't know about that.

Mr. SYNAR. Did you request it, once you knew about it?

You didn't know about it?

Dr. ORR. No, I didn't know about it. Maybe I am confusing you, Mr. Chairman.

Mr. SYNAR. No, that's fine.

Were you and your staff only provided the tract map of the area proposed to be deleted from the park similar to the one that's attached to the scope-of-work statement?

Dr. ORR. That's correct. That's what I was alluding to.

Mr. SYNAR. Ms. Harrison, when you saw the tract map attached to the scope of work, isn't it true you contacted Dr. Orr expressing concerns over the size of the land proposed to be deleted from the park?

Ms. HARRISON. Yes, I did.

Mr. SYNAR. Did you ask Dr. Orr if he had a map showing the location of the western spur and the railroad maintenance building?

Ms. HARRISON. Yes. The only map he had was the one attached to the scope of work.

Mr. SYNAR. Ms. Harrison, didn't you have a telephone conversation with Ms. Mickey Moran of Dr. Goodwin's staff in July 1990 about the potential archaeological resources that may be encountered in the project area and the battle-related activities?

Ms. HARRISON. Yes, sir.

Mr. SYNAR. Ms. Harrison, after this land exchange blew up did you have your staff provide her with historical resource information including the Bachelder maps?

Ms. HARRISON. During her site visit, yes, I did.

Mr. SYNAR. After that land exchange blew up, Ms. Moran of Dr. Goodwin's staff was asked to prepare a memo on February 25, 1991, that discussed her contacts with you. In that memo, she states that she reviewed the Bachelder maps and no troop movements were depicted in the southern area of the project.

In fact, don't the Bachelder maps show the evolution of battle in half-hour by half-hour segments, and several maps show troop activity in the southern region of the project area?

Ms. HARRISON. Yes, they should.

Mr. SYNAR. While the maps show this, Ms. Moran's memo states that you did not attribute any significant battle-related activity to the southern portion of the project area. Did you tell her that, that there was no significant battle-related activity?

Ms. HARRISON. Probably in general terms, yes, as opposed to the first railroad cut. I had indicated to her in my discussions with her that the southern portion of the tract, as I saw it in the segment map that was attached to the task directive, this was the eastern slope of Seminary Ridge which was primarily a support area that was a place where Cutler's Brigade retired to on the 1st and stayed there for a while before the retreat. So there was no real battle activity on the eastern slopes of Seminary Ridge.

Mr. SYNAR. Ms. Harrison, wasn't the park service given notice when Mr. Goodwin & Associates would be in the park to conduct their survey?

Ms. HARRISON. Yes, we were.

Mr. SYNAR. Did anyone from the cultural resources staff supervise that survey study?

Ms. HARRISON. No, sir.

Mr. SYNAR. Were you in the park on August 2 and August 3, 1990, when Goodwin & Associates conducted the survey?

Ms. HARRISON. Yes, sir, I was.

Mr. SYNAR. Wasn't it your responsibility to oversee the work?

Ms. HARRISON. No, sir. I'm not a trained archaeologist. I wouldn't be able to judge or assess what they were doing.

Mr. SYNAR. If it wasn't your responsibility, weren't you at least curious about the possible artifacts they might uncover?

Ms. HARRISON. In most archaeological projects that have taken place—

Mr. SYNAR. Was anybody supposed to be there? Who was supposed to be there, Ms. Harrison?

Ms. HARRISON. From the park?

Mr. SYNAR. Yes.

Ms. HARRISON. No one was told that we had to be there from the park.

Mr. SYNAR. So if it is required that you all supervise these types of things, who would be in charge of that?

Ms. HARRISON. It should be an archaeologist for an archaeological project.

Mr. SYNAR. Well, you know we heard the college, under oath today, say this was a well supervised activity. No one showed up that day from the park, so there wasn't any supervision, was there?

Ms. HARRISON. Onsite supervision, no, sir.

Mr. SYNAR. Dr. Orr, as you know, Goodwin & Associates' survey found one unfired minieball and bits and pieces of glass. Does the fact that only one unfired bullet was found in the project area conclude that the land was not historically significant?

Dr. ORR. No.

Mr. SYNAR. Isn't it true that you yourself have conducted a number of surveys on other parts of the battlefield, where records document that significant finding occurred and found absolutely no artifacts?

Dr. ORR. No, I don't think so. I think we have—maybe in a mitigation project where we didn't find anything when we were looking for that kind of window; but I can tell you that other projects [Rose Farm and McPherson Ridge] I worked on in Gettysburg were quite dense.

Mr. SYNAR. Why were so few found here in phase I?

Dr. ORR. Because I think it attests to the fact that that area had been used, there had been quite a bit of disturbance in that area. I think Mr. Goodwin testified to that.

I was somewhat aware of the area. I had done a survey further to the north there, so I was aware of the disturbance in that area.

If I could, Mr. Chairman, a comment on the supervision question. I suppose that, in retrospect, I should have been there every day. I certainly thought about it. But typically when we think of supervision and archaeological projects of that short a duration—I have been well aware of Mr. Goodwin, and I did not feel it was necessary for me to be there, especially with the early reports of this negative evidence being found. I wanted to clarify that.

I don't think it is incumbent upon the park to—

Mr. SYNAR. We are not—Mr. Goodwin is innocent. It is the college that holds out this supervision by you as a way to build their credibility.

Dr. ORR. I believe the project, in a sense, was supervised to the point where I didn't see any trouble with the field operation. I didn't have any reports of any problems or difficulties. And there weren't any untoward discoveries that required immediate atten-

tion under the Archaeological Resource and Protection Act, on which I am called many, many times in the field in such instances.

Mr. SYNAR. All right. One final question before I go to Mr. Kennedy for the final segment.

You all have been here all day and we spent a long time going through this. Do any of you—any of you think this land exchange, in retrospect, was a good deal?

Mr. Coleman.

Mr. COLEMAN. The way it was consummated, no. We made some mistakes.

I think the intentions were honorable. If the railroad could have been relocated without disturbance of the topography, if we had stipulated that in the deed restrictions, I think we would have had an extremely successful exchange.

Mr. SYNAR. Thank you.

Director Kennedy.

Mr. KENNEDY. Yes, sir. Could I just comment only a little bit on the preceding colloquy, just very quickly?

Mr. SYNAR. Sure.

Mr. KENNEDY. It is my understanding—I could be wrong about this—that Mr. Brown's statement to you that the cut was essentially in pristine condition isn't quite true, and it may bear upon the degree to which you found stuff there or didn't.

My understanding is that there were no tracks through there until the 1880's, and if I am correct in this and that there were substantial changes in that terrain—and that might very well be, since I assume that when you put tracks down, you put fill down, that might easily explain why there are so few things found. It is just a footnote.

Mr. SYNAR. I appreciate that, but that is not the issue here.

Mr. KENNEDY. Of course it is not, sir.

Mr. SYNAR. The issue is whether or not supervision which would cleanse someone—

Mr. KENNEDY. Yes, sir. That was just a footnote because I wanted to clarify a statement by a sound person, who I think was wrong.

Mr. SYNAR. All right. Director Kennedy, you have had to listen to this long and depressing tale in a land exchange gone wrong. As you have heard us discuss, under the Boundary Act of 1990, Congress approved of disposal of this parcel, in general; and it might be said to have been more aware of a possibility of exchange, as described by the park service, as without any harmful effects.

But simultaneous with approving the disposal of the excluded tracts in general in the act, Congress mandated new protections to govern the actions of the park service in making the disposals and to ensure the protection of the park and the historic districts in the event of any exchange anywhere.

Now, we have had every reason to believe that they would be complied with, here in Congress. And would you agree with me that in this case those new mandated protections for the park and the historic district were not met?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. I realize that in your prepared statement you admit to mistakes, and like I said, it is very candid and open. I think it

is important for us to get some consensus on what those mistakes were.

First, there were a number of alternatives to the college's relocation program which should have been considered and none of which would have involved the destruction of Oak Ridge. For example, the existing and new tracks could have been moved further east toward the campus, so that only minor park land and excavation was needed in the western spur.

If there was a spur at all—and that is again something that really begs the question since it hasn't been hooked up—the park would have simply granted a right-of-way over a small portion of land at the base of the ridge and dealt directly with the Gettysburg Railroad. Yet no alternatives to the basic proposal were examined.

Do you agree that all the alternatives should be examined before any deal is executed?

Mr. KENNEDY. Oh, yes, sir.

Mr. SYNAR. Do you agree that the National Park Service should have thoroughly reviewed the construction methods being used by the college and had their engineers review the proposal carefully to make sure that there was no damage?

Mr. KENNEDY. Yes, though it strikes me as a lay person that this doesn't require an elevated level of engineering understanding. It is a fairly obvious consequence. So I am not sure that we would have to have a team.

Mr. SYNAR. You are very refreshing, I have to tell you. You do agree also that both in the process and throughout the negotiation process, early in the process and throughout the negotiation that the cultural resources staff at the park and the regional office should have been more closely involved?

Mr. KENNEDY. Yes, sir, and we have got to see to it in what you get back from us in proposed changes in the mode of our operations that that is baked firmly in what we propose to you. If it isn't there, it strikes me you should tell us to put it there.

Mr. SYNAR. You will agree that that would have made better compliance with the National Historic Preservation Act?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. You heard in great detail this morning the proposal changed substantially from what the public and Congress had been told about during the boundary study process and therefore had every reason to be surprised on what ultimately transpired.

Mr. KENNEDY. Yes.

Mr. SYNAR. Given that should never have been the case, do you agree that any final deal that was negotiated with the college or Gettysburg Railroad should have had the benefit of public input, or in other words, been put out in full detail for public review?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. Do you also agree that it would have been great and wonderful for the park service to have had actual procedures and criteria in place at the time to ensure that those things happened?

Mr. KENNEDY. Yes.

Mr. SYNAR. Now, this is either going to be a memorial to one of the most significant battles of our Nation's history or a memorial to the poor resource management of our national parks. So before we go on, let's get closure on this issue at Gettysburg.

Please tell us the full range of options you have for dealing with this situation and tell us exactly what you have done about this in the year that you have been there. And, most importantly—and I think there are a lot of people here that want to know this answer—what are you going to do?

Mr. KENNEDY. As I tried to suggest, going in, it seems to me that the remedy for the future is more important than recollections of the unhappy past.

Those remedies for the future fall into two categories, the adumbration by the park service of a pattern to be followed in every instance in which a divestiture of Federal property occurs, particularly those which have a definable purpose. It is really quite clear what the Gettysburg battlefield is; that also doesn't require an astonishing degree of initiative. And whenever we make a divestiture, surely those regulations should include the full contribution, though not necessarily concurrence—but on-the-record contribution of the qualified people involved, so there is a record built, certainly on those of any significance. That is part of it.

The other part of it is, already, I think, being initiated by this region in which the functioning merger of the planning and the cultural or natural resources—we could apply this unhappy story to the management of the destruction of biological species just as readily; it happens, this is a battlefield.

The same story could be told elsewhere under different circumstances, but wherever it is that gave justification for the initial setting aside of a national interest should be observed and clearly stated to have been observed and commented upon in the process. Now—

Mr. SYNAR. Mr. Kennedy, when I was a child and I messed up, the first thing my parents did was make me admit it, but oftentimes that wasn't enough.

Mr. KENNEDY. That is right.

Mr. SYNAR. Sometimes I have to fix the mistake. What are you going to do to fix this mistake?

I love you for admitting we have a problem. What are you going to do to fix this mistake?

Mr. KENNEDY. There are requirements upon us to provide to you within a month, or at the most, two, the means of reducing the likelihood of repetition. We will, because I can do this myself, issue a set of guidelines to the regional operations which require in the meantime that there be full consultation, with some set of stipulated, reasonable standards as to how big and significant the transaction is. There are a lot of little ones.

We need to do that for you and we need to do it quickly, not just "we will see you later."

Mr. SYNAR. OK. I appreciate the fact we are going to have guidelines and criteria. I appreciate the fact that you all but announced you are putting on hold any land exchanges until you have them. Is that correct?

Mr. KENNEDY. That's correct.

Mr. SYNAR. Great. I will come down there and kiss you if that will do it. What about Gettysburg?

Mr. KENNEDY. Gettysburg?

Mr. SYNAR. The mistake at Gettysburg, what do we do to Gettysburg?

Mr. KENNEDY. OK. It seems to me that falls into two categories. How do we manage Gettysburg, which is not something I think I should discuss with you here. It seems to me that is an obligation of professional managers to work out, in light of the record, and we ought to do that.

Second, however, you have asked the college a couple of questions which, it seems to me, you may just as well address to us, which is what is so wonderful about an MOU as against an amended quitclaim or other deed.

As an extinct lawyer, my preference is for documents that you can enforce.

Mr. SYNAR. What if I told you that we know that Mr. Cisneros a year ago told the college that he wanted the western spur eliminated and the ridge rebuilt?

Mr. KENNEDY. I would regard that as a—as an instance in which Mr. Cisneros complied with his full responsibilities as a superintendent. And the thing that we have before us right now is whether or not we go through with an MOU with the college. That's what is—that's the pie that is in the oven.

Mr. SYNAR. Yes, but you heard what the college is all hell bent to do an MOU because, guess what, there is no public review.

Mr. KENNEDY. That's correct, sir.

Mr. SYNAR. Do you support that proposition?

Mr. KENNEDY. No, sir. As you yourself observed, you have to have two parties to an MOU, and we do not take the view that an absence of—I am sure the college doesn't either, but we are for fresh air. The college, I am sure, is for fresh air, too; and we should conduct ourselves from here on so nobody has any doubts about the ways in which we are reaching conclusions.

Mr. SYNAR. I am going to make this easy to you. An MOU corrects what is going to happen in the future, or a quitclaim deed could do that, too. Are you prepared to come to us and say you are going to undo this and go back to where we were and rebuild the ridge? Are you prepared to come to Congress and ask for the money to do that?

Mr. KENNEDY. I am not until I understand more than I do today, and I would be able to answer that question in 2 weeks, what my legal remedies are and aren't. I have attempted to establish that as clearly as I can. That's not clear to me yet. And I don't know the answer to your question.

I don't want to make promises that we will then have to run up here and say, oops, I am very sorry, nor do I know what the real cost is—

Mr. SYNAR. You know what disturbs me, Mr. Kennedy—and I don't mean to press this point any farther, but everybody I have given a chance to quit digging today just doesn't—you know, they want to keep digging. I mean, any of you all I have thrown a softball, you could come in here and say we've made a mistake, let's work it out, I am prepared to be the first one at the table to do it.

But now what we have is, I have got everybody who is going to be at the table on this MOU, or whatever we do, and none of you

have said that a viable, serious option is to fix this. That concerns me, because if everybody at the table has already agreed that's not one of the options, that's likely not going to happen.

Mr. KENNEDY. Mr. Chairman, I have not agreed that that is not an option. I have stated that I need to understand what the consequences of that option are. It is an option, like a range of other options, as—the least of which is just put up some trees. That is an option, too.

But we have an obligation to respond to your inquiry as to which of these options we are prepared to support and why, but that is a subject or a possibility that we should take seriously. My answer to that is, yes, we will.

Mr. SYNAR. Why don't you, when you are working these next 2 weeks to come up with those options, provide for the subcommittee in a formal paper all those options so we know what you are considering?

Mr. KENNEDY. We will strive to do that.

Mr. SYNAR. You will provide that?

Mr. KENNEDY. Since lives are—since trucks hit people, I am always going to say I will strive to do it and then if I don't, you can be mad at me.

Mr. SYNAR. Given your candidness, I am going to take that as a yes.

Let's go on to the issue of policy guidelines and criteria for discretionary land exchanges. As you know, we've had two previous hearings on this issue, and the lack of guidelines and criteria continue to concern us. In 1990 hearings, Will Kriz, the former head of the lands division for the whole park service, confirmed at that time there were no written park service guidelines or criteria for undertaking and executing intrastate exchanges.

The Land and Water Conservation Act outlines when you can do discretionary exchanges, but nothing detailed on how you do them.

Mr. KENNEDY. Yes.

Mr. SYNAR. Even today if you open up the Lands Office Land Acquisition procedures and turn to the chapter covering the land exchanges, you find it empty.

Mr. KENNEDY. Blank.

Mr. SYNAR. Now we were told on Friday that the park service is developing specific written guidelines and criteria for processing such exchanges. Can you briefly describe what those guidelines and criteria entail?

Mr. KENNEDY. Mr. Chairman, I was told this morning that we had provided those to the committee. Has that happened?

Mr. SYNAR. Yes, we have them.

Mr. KENNEDY. OK. That is as much as I know about them.

Mr. SYNAR. You want us to get them on the record?

Mr. KENNEDY. Yes, sir, I do.

Mr. SYNAR. OK. We will enter those into the record.

[The information follows:]

The National Park Service [NPS] provided their initial draft land exchange procedures for the record and they are on file with the subcommittee. The subcommittee reviewed and commented on these procedures. That response is also on file with the subcommittee. The NPS is in the process of revising its procedures.

Mr. SYNAR. Are these new guidelines and criteria designed to help the park service meet the requirements I just outlined?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. Why has the service never implemented these guidelines before now?

Mr. KENNEDY. That is a hard question, and it is one which I don't think I am qualified to answer.

Mr. SYNAR. It's anybody's guess, isn't it?

All right. Let's talk about the proposed criteria. We note that the only criterion which is required to be met under the new guidelines is the one that the proposed exchange benefit the park unit and that the Federal lands to be exchanged should be deemed, "suitable for disposal."

Then it goes on to list eight other criteria which may be considered. In other words, they are discretionary.

Now, I realize you can't develop hard and fast rules that will apply in every way to every exchange, but how come every additional criteria beyond the general one is discretionary?

Mr. KENNEDY. Probably because the thought was that you would have a hierarchy of instances in which big, important ones had them all and the next set had another category of breadth. However, it strikes me that a report to you with some regularity on what has been done along those lines is essential. We should do that so you can judge the degree to which we are applying those categories intelligently.

Obviously, you don't want to have an intricate set of guidelines applied to very small instances of very little significance. I realize those are hard words to apply.

Mr. SYNAR. I want to walk you through the form which contains the section, initiation and negotiation. First, under the new procedures, the park superintendent or unit manager would have to prepare a justification statement before any discretionary land exchange is consummated and must show that the land being exchanged is "suitable for disposal," correct?

Mr. KENNEDY. Yes.

Mr. SYNAR. Before that justification statement can be finalized, a number of important things have to be done by the Service. For example, the justification statement has to show that alternatives to the exchange were considered, right?

Mr. KENNEDY. Yes.

Mr. SYNAR. As to—and it also has to contain a listing of all special considerations—and I am quoting from your draft here, that is before you—such as possible presence of threatened or endangered species, archaeological sites, wetlands, floodplains, et cetera, and any restrictions proposed to be placed on the use of Federal land after the conveyance.

Now, will that requirement be kept in the final version?

Mr. KENNEDY. Since it is being discussed, I don't want to give you—I don't know, but I assume yes. It makes very good sense to me.

Mr. SYNAR. Me, too. The justifications statement will also have to include a level I contaminant survey for the non-Federal property. I would note that in the case of Gettysburg, that survey was

not conducted until the morning of the day the deal was signed. Are you going to keep that requirement for the survey?

Mr. KENNEDY. Yes.

Mr. SYNAR. Up front?

Mr. KENNEDY. Yes.

Mr. SYNAR. Finally, the justification statement would have to include a preliminary estimate of values. In short, it would have to have an initial evaluation, not a full appraisal done at the time of the exchange like in Gettysburg, right?

Mr. KENNEDY. Yes. I assume that means guesstimate, and that we could certainly do that without tying people up for months, yes.

Mr. SYNAR. Here is the important part which—

Mr. KENNEDY. Excuse me, Mr. Chairman, I want to hedge that only to the extent that there may be instances in such an estimate, lead sellers or other interested speculators to be very happy with the number, and we would want to hedge that a little.

I don't know what the implications of a hard number might be. I want to review that little. We don't want to enrich speculators because we are forced to put a number in before we have consummated either an option or some other mode of purchase.

Mr. SYNAR. Let's get to the important part, which deals with the preliminary negotiation and agreement. Under the new guidelines if a proposed exchange gets past the first hurdle, which is the justification statement, only then does the service begin a preliminary negotiation with the non-Federal party to explain the parameters and procedures of the exchange and the relative values, right.

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. It also stresses that the service should not commit to short timeframes for any exchange deal to go through. We didn't note at that hearing at the time, but I might observe that there has been a continuing pressure on the park service in the Gettysburg exchange process from Mr. Van Arsdale, who several times stressed that the college was locked into a nonrefundable agreement with Sloan Cornell, and if he didn't get it done, the college stood to lose money.

Now, on paper, it looks like the deal took 2 years. In reality, it is clear that the only thing that kept the service from finalizing the exchange was waiting for the act to pass.

Now, you recall the deal was signed within a month of that happening. Do you agree that it is important to stress the service shouldn't let itself be locked into tight timeframes that might undercut thorough review of the proposal?

Mr. KENNEDY. Yes, sir. We are going to miss some. That's the price that we pay.

Mr. SYNAR. Will you tell people that, from here all the way down?

Mr. KENNEDY. I will do my best.

Mr. SYNAR. All right. In any event, only after the justification statement is done, along with those other things, is the service to sit down and start the preliminary negotiations, which are to include discussions like, one, estimated values and equalization payments; two, require documentation of such environmental assessment, endangered species report, cultural and archaeological resources survey and mitigation, if necessary; restrictions on further

use of land; public involvement, including necessity to publish notice in local newspapers and letting the other party know that the deal may not go through; and surveys of offered land.

Is that a pretty good recap of that proposal?

Mr. KENNEDY. You bet.

Mr. SYNAR. All right. Is that going to make it?

Mr. KENNEDY. Yes.

Mr. SYNAR. OK. Now, according to this document you gave us Friday, only then should the service enter into a preliminary, nonbinding exchange agreement setting out all the agreed details of the exchange—that is quoting the draft—and that preliminary, nonbinding agreement would then contain all sorts of explanations and qualifications.

Now, for the record, why do you think all these requirements are important at the preliminary stage of the process?

Mr. KENNEDY. So that you know what you are doing, and it focuses the attention——

Mr. SYNAR. The best answer is so that Gettysburg doesn't happen again.

Mr. KENNEDY. I stand amended.

Mr. SYNAR. OK. Good answer.

Section 6.1 of the proposal concerns "Public Notification." Now, I am especially happy to see that section in this report, given what we have learned today, because it is explicit in emphasizing the importance of early and thorough public involvement in the process. But I have to tell you I am troubled by the fact that it also seems clearly to indicate that the park service should have been doing these things with regard to the Gettysburg exchange, and as we have learned today, that's not the case.

For example, this draft states that a part-specific act notwithstanding, "a requirement for public involvement" is "implicit in the generic exchange authority of the Land and Water Conservation Act and explicit in the National Environmental Policy Act and other laws, orders, and regulations including 43 CFR 2201.1."

It goes on to say that the "Law or policy require use of at least the following in all NPS exchanges: One, advertisement in local newspapers; two, notification of the affected congressional delegations; three, notification of State and local governments; four, notification of the adjacent and nearby landowners, both private and governmental."

Now, Mr. Kennedy and Mr. Coleman, if this is correct, there is no way, by any stretch of the imagination, that the public notice requirements were adequate in the Gettysburg land exchange when it is clear that the public did not know the specific proposed and developmental plans. Don't you agree?

Mr. KENNEDY. I do.

Mr. SYNAR. Mr. Coleman, do you agree?

Mr. COLEMAN. Yes. They didn't know the specifics.

Mr. SYNAR. Now, according to this draft, "as soon as possible after development of the preliminary agreement," the service is to publish a Notice of Realty Action once a week for 3 consecutive weeks in a general circulation paper in the area, and it notes that publication in the Federal Register may also be necessary. We would have to allow 45 days for public comment on the proposal.

Now, obviously that wasn't done with regard to the Gettysburg exchange, so let me ask you all this: If you had done this in the case of Gettysburg—if actual survey maps and specific development plans had been put out for public review and comment prior to the deal being signed—you do realize this whole fiasco would have been avoided?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. Now, the paper also deals—

Mr. KENNEDY. I would have to say probably.

Mr. SYNAR. Ask those people behind you. I will guarantee it, the public would have commented.

Now, this paper also details the form of the notice and states it must "describe both the offer and selected lands in such a fashion that they are identifiable to the public" and requires descriptions of "special considerations, retentions, or restrictions to be placed on selected lands," meaning non-Federal lands. It seems to me that that's better than nothing, but I would note that, in my view, it should include two other things:

One, a description of any and all development plans for the Federal lands to be given away, sufficiently detailed so the public can understand exactly what is being proposed; and two, it should include restrictions to be imposed on Federal lands as part of the agreement, not just non-Federal lands.

Could we do that in this proposal?

Mr. KENNEDY. I think I understand it. Yes. And subject always to the right to think about it and find out I am wrong. But this sounds very sensible to me, if we can return to you with my explaining why the egg is on my face, if I have said yes and shouldn't have, but have to explain why, that all sounds very sensible to me.

Mr. SYNAR. Good. The draft goes on to outline what the service must do in reaction to adverse comments by the public or others and states that actually—that they must be "analyzed to determine if they have merit"—a radical proposal if ever there was one, I might add. Then the Service again must provide notification to the affected parties.

What specifically will be required of the service, Mr. Kennedy, to meet this provision for "analyzing" adverse effects and comments?

Mr. KENNEDY. We will fill that for the record. I don't know.

Mr. SYNAR. OK. But you will ensure the right people are involved and listened to?

Mr. KENNEDY. Yes, sir.

Mr. SYNAR. The new draft also includes specific language on NEPA compliance—I am especially delighted to see that—and it states, "NEPA compliance must be coordinated closely with the regional or park compliance staff." Again, what procedures will be in place to make sure that cooperation takes place?

Mr. KENNEDY. Ditto to previous response, please.

Mr. SYNAR. OK. Now we get to the provisions which clearly—in my view, clearly would have precluded the Gettysburg exchange if they had been in place. That's called "Cultural Resources."

According to this draft document you gave us, "A cultural resource survey of the selected lands by a qualified person is required in all exchanges"—are you listening to this, Dr. Orr and Ms. Harrison and everybody else who has to touch this? It goes on to say,

"In all cases, coordinate closely with your park or regional cultural resources staff."

Now, I am sure you agree with this morning's testimony that had that been done, this wouldn't have happened in Gettysburg, correct?

Mr. KENNEDY. Yes.

Mr. SYNAR. All right. For the record, what procedures will be in place to ensure the cultural resources are adequately surveyed by the right people?

Mr. KENNEDY. Ditto to the above. We will fill in.

Mr. SYNAR. Finally, I have to tell you I am still troubled by the delegation of authority issue.

Mr. KENNEDY. So am I, Mr. Chairman and I want to agonize about that. It is affected very much by the current downsizing exercise which is to determine who does what at what level of the park service. There is a—there is an assumption, which is not always the case, that it is always well to press ostensible decisionmaking as far down as possible.

That has the effect in some instances of removing the most qualified advice from the decisionmaking process. Therefore, I want to look at the place at which the synthesis is made sensibly in each broad area of our activity; that it is not a snap decision, and it is related to a lot of other ones.

Mr. SYNAR. I appreciate that statement, and as you know, I have strong interest in that and particularly in these discretionary exchanges; and we want to work with you to make sure that happens.

One final question, Mr. Kennedy, before I let you go. Can I get a commitment from you that on nonurgent land exchanges that are pending, that all of them are frozen until we get this in place?

Mr. KENNEDY. Sure. Something may get out the barn today or tomorrow before I can be sure that I am right, but it is my intention to see to it that we put a freeze on until we get an assent from you that we are doing it right.

Mr. SYNAR. Let me thank all of you for being here.

Let me make some closing comments that I think may help us down the road, and I would like to make some observations.

Given everything we have spent hours going through today and everything that you all have been through in the past 3 years, you and the college must realize that none of this had to happen. Understandably, the park service wanted a restricted easement over certain college property to protect the battlefield lands. But we also discussed today that the former president of Gettysburg College had already given the park service a commitment that most of the lands would never be developed.

I would like to think that the college intended to abide by that commitment with or without an easement. In exchange for the easement, we gave away a piece of battlefield land, so that the college could move the rail lines away from its campus.

In fact, the college had several alternatives which would have avoided the need to cut down 30 feet of Oak Ridge and each of those would have been carefully considered.

First and foremost, the college could have moved the main line, the spur line, and the maintenance building to the far western side

of its own property—in fact, at one point in time, the college had a plan just to do that exact thing—or they could have moved the main line a little farther east on their own property so that the western spur ran along the base of Oak Ridge. That, most likely, would have involved minimum excavation at the corner of the ridge.

Third, they could have rejected outright any plans for a western spur. In short, they could have done what the college and the park service told Congress and the public they were going to do. They could have laid the 3,600 feet of track along the base of Oak Ridge in a way that would have had no impact on known historic resources. People didn't object to that concept then nor have we talked to anyone in the area during the investigation who would have objected to this relatively minor excavation, had it been necessary.

Finally, it seems to me that the park service should have considered simply giving a right-of-way over a smaller portion of the land to accommodate relocation of the main tracks without giving up both ownership and control over the development. Instead of any of those alternatives, however, the college chose to be more concerned about its pond and its baseball field and its own future development than about the public's property at Oak Ridge.

Based upon our investigation and today's hearing, it seems clear to us that the public did not have any way of knowing exactly what was to happen to Oak Ridge, because neither the college nor the park service told them. Although they had them, neither released detailed maps or specific development plans to the public, or to Congress, so that the public—the owners of the land—could properly analyze the expected impacts.

And when the damage occurred, the park service sought to downplay the action rather than taking action to prevent further damage to this historic ridge; and it spent the last 3 years, very frankly, pretending nothing went wrong.

Now, Mr. Van Arsdale made a sharp deal. Understandably, people often try to get the best deal they can from the park service and other agencies. But in view of the significance of this area, and the fact that these lands were already on the National Register of Historic Places, I think most would agree that far more sensitivity on the part of this college, this college named after this battle, was called for here.

Then there was the Government; the Federal Government has all sorts of rights and prerogatives when it comes to managing our public resources. It is not the prerogative of the park service to give away our Nation's history. We have given the Interior Department and its resource agencies an array of powers and the discretion necessary to conduct the day-to-day business of managing hundreds of millions of acres of the public's land.

In giving them that power, Americans expect them to protect our land and our minerals and give special care and attention to the crown jewels of our natural and historic resources. We expect—the people expect—those discretionary authorities to be exercised with adequate knowledge and good judgment on behalf of all of us.

At the core of the park service's discretionary land exchange authority is a critical test: Is this exchange in the "public interest?"

Unquestionably, the park service should have given far more scrutiny to the Gettysburg proposal at any number of points in the process, included the right of the people in the process, and considered all the alternatives. It didn't happen, and as a result, we are left with a deal that must be viewed not "in the public interest."

The subcommittee and I personally appreciate all our witnesses appearing before us today to help establish a record of what happened here. I know that most rearranged their personal and professional schedules, and I am greatly appreciative of that.

We may look back at this hearing as a landmark hearing on all land exchanges on how we, regrettably, failed to adequately care for one of our crown jewels; but in doing so and reviewing that record, we may have helped protect the future crown jewels of this great Nation.

To you personally, Roger—you are a terrific person; I want to work with you. I think you are a breath of fresh air. Your honesty and candor, both in management style and approach and philosophy, is something that is long overdue; and you can be assured that this subcommittee will work with you every step of the way.

Mr. KENNEDY. Thank you, Mr. Chairman.

Mr. SYNAR. The subcommittee is adjourned.

[Whereupon, at 4:22 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

THE PENNSYLVANIA STATE UNIVERSITY

601 LIBERAL ARTS TOWER

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College of the Liberal Arts
Department of History

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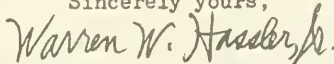
Mr. Brian McLaughlin
B-371-B Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. McLaughlin:

This letter is to confirm that on the morning of the above date I did voluntarily engage in a telephone conversation with you regarding the alteration of land at the railroad cut at the southern end of Oak Ridge on the Gettysburg Battlefield. I gave some historical facts regarding the fighting at that area on July 1, 1863, and the high significance of retaining that area in its original physical condition as it was at the time of the battle.

With foreknowledge, and with my full approval and consent, this telephone conversation with you was taped for use by the House Committee on Government Operations; primarily by that committee's Subcommittee on Environment, Energy, and Natural Resources.

Sincerely yours,



Warren W. Hassler, Jr., Ph.D.
Professor Emeritus of American History

RECORDED STATEMENT OF PROFESSOR WARREN HASSLER

Dr. Hassler: This is Professor Warren Hassler, Professor Emeritus of American History at Penn State University. I am speaking with respect to the importance of the railroad cut at the southern end of Oak Ridge on the Gettysburg Battlefield.

At about 10:30 a.m. on July 1, 1863, the first day of the Battle of Gettysburg, Cutler's Union brigade withdrew to this particular railroad cut upon heavy Confederate attack to the west. It rallied at this railroad cut.

About 2:20 p.m., the Confederate artillery fire from Oak Hill forced Cutler's federal brigade to fall back from McPherson Ridge again to the woods at this railroad cut at the southern end of Oak Ridge. At about 2:40 p.m., Cutler's Brigade wheeled to the north at this railroad cut and fired devastatingly upon the right flank of Iverson's attacking Confederate brigade attacking further to the north on Oak Ridge and inflicted severe casualties. Then facing west, immediately thereafter Cutler's brigade fired on the left flank of Daniel's Confederate brigade, which was facing south and attacking Stone's Union brigade at the McPherson Ridge position and inflicted heavy losses on Daniel.

At about 4:00 p.m., Cutler, facing north at the Oak Ridge railroad cut, aided Robinson's retreating Federal brigades against pursuit by Rhodes' Confederate division along Oak Ridge moving southwardly. At about 4:15 p.m., James Stewart's Union battery of twelve pounder Napoleon cannon, astride this railroad cut at Oak Ridge...

Mr. McLaughlin: They were on the north and the south...

Dr. Hassler: Both, both. The right section of Stewart's battery was just on the northern side of the railroad cut, his other section just to the left of it. And they decimated Scales' Confederate attack on Seminary Ridge, just south of the pike, as Scales admitted, cutting his brigade up into squads. Some feel it was the most devastating artillery fire by a single battery, North or South, through the entire Civil War, at this cut.

And finally, near 4:30 p.m., Cutler, with a few other troops, at the railroad cut, including the right section of Stewart's battery and the left section, all at this railroad cut, held back the brigades of Daniel, Ramser and O'Neill long enough to allow Paul and Baxter's Union brigades to retreat via the railroad cut and the east edge of Oak Ridge to safety south of the town of Gettysburg.

That's a little more detailed account of the principal actions at this particular railroad cut at the southern end of Oak Ridge. I personally wrote a book on the battle of the first day, and consider this railroad cut to be of considerable importance, and to see it desecrated is beyond historical belief.

McLaughlin: Thank you for that, Professor Hassler. Let me ask you again: the cut itself, then, as the Union troops were retreating, served as a bit of a funnel, if you will...

Hassler: It did.

McLaughlin: ...In that the ridge itself was very steep and would require the Union troops to go over it as they were retreating.

Dr. Hassler: Yes, indeed. It was both a, it could be called, at one time or another a haven, and at another time an impediment. And my personal view is that it should be restored to its original condition, if at all possible.

Mr. McLaughlin: Can I ask - this is a matter of opinion and I'll recognize it as such - did Stewart's batteries contribute to slowing the advance of the Confederates late in the afternoon of the first day in such a way that perhaps it even prevented the Confederates from seizing the northern portion of Cemetery Hill.

Dr. Hassler: Absolutely. Those were vital minutes when Stewart's battery opened fire and that's why I think, without overexaggeration for dramatic effect, that it was one of the most significant bits of artillery firing during the whole Civil War, and, of high significance, to enable the Federals to retreat, as you say, through the town to the Cemetery Hill position.

Mr. McLaughlin: Let me also ask you this, Professor Hassler: In the preceding months to Gettysburg, the Union side had experienced a loss at Fredericksburg, and I believe later at Chancellorsville.

Dr. Hassler: Yes, indeed.

Mr. McLaughlin: This stand taken by the Union troops on the first day perhaps was monumental in that it was the first time the Union troops had really held their defensive positions and really stood up to a Confederate onslaught.

Dr. Hassler: I think that's fair and I think it's the first time that the Union high ranking officers worked together as a team, and I would deem the first day's battle, which is sometimes shrugged off, as every bit as important as the second and third day. All the Federals had to do on the second and third day was hold the Cemetery Ridge, Round Tops and so forth and the Confederate invasion of the north was doomed.

Mr. McLaughlin: And on the first day they secured those positions in great part because they were able to hold the Confederate advance north and west of the city.

Dr. Hassler: I think that is absolutely correct, and I think highly of the performance of Reynolds and especially Abner Doubleday and some of the

others I mentioned, taking nothing away from the gallantry of the Confederate attacks.

Mr. McLaughlin: Okay. And Professor Hassler, you were an historian at Penn State University for a number of years.

Dr. Hassler: Thirty-one years, yes, as Professor of American military history there.

Mr. McLaughlin: American military history. And the book that you made reference to detailing the events on the first day is known as Crisis at the Crossroads.

Dr. Hassler: Yes, subtitled The First Day's Battle at Gettysburg.

Mr. McLaughlin: Okay. You are recognized then as an expert historian on the events on the first day.

Dr. Hassler: Well, other people say that, so I suppose that is true.

Mr. McLaughlin: Okay, I'll accept that.

Dr. Hassler: Thank you.

Mr. McLaughlin: I thank you for calling and sharing your comments with me, Professor Hassler. I recognize that you are located in California. It is our desire to put together a panel of witnesses that will testify to the significance of the events at that cut in the ridge and your comments here today will go a long way to helping us in that matter.

Dr. Hassler: Well, I hope it will be of some use and contact me again if I can be of any use.

Testimony of Dr. Harry W. Pfanz, Rockville, Maryland

I am Harry W. Pfanz. Before I retired in 1981, I was a career employee of the National Park Service. I served ten years as a historian at Gettysburg National Military Park, and after 1974 was the Service's chief historian. I have written two books on the battle of Gettysburg during my retirement that were published by The University of North Carolina Press. Since 1956 when I began work as a historian at Gettysburg, I have been concerned about the preservation of historic properties in the custody of the National Park Service, and of the battlefield of Gettysburg in particular. It was suggested that I make a brief statement to you about the events of that battle at the railroad cut in Seminary Ridge.

The battle of Gettysburg, fought on July 1-3, 1863, was a decisive battle of the Civil War and American history. Before Gettysburg, Gen. Robert E. Lee and the Confederates of the Army of Northern Virginia could strive for a victory that might well secure the Confederacy's independence. After the Union victory at Gettysburg, Lee and his valiant army could fight only to delay their ultimate defeat--the road that they would be forced to follow would lead to their eventual surrender at Appomattox Courthouse.

The fighting on the opening day of the battle--that most associated with the railroad cut in Seminary Ridge, took place in the fields west and north of Gettysburg. There a portion of Lee's army met a smaller force of the Army of the Potomac and, after attacks in the morning and afternoon, drove the Union forces back to Cemetery Hill and to other positions south of Gettysburg where two more days of fighting occurred.

The arena of conflict of special interest to this hearing is that portion of the low tableland west of Gettysburg bounded by the Chambersburg Pike on the south and the Mummasburg Road and Oak Ridge to the north. This plateau, which measures over a half mile in width from east to west at the Chambersburg Pike, consists there of three low rises in the ground separated by two depressions. The rises in the center and on the west are arms of McPherson Ridge which slopes west into the ravine of Willoughby Run. The east rise is Seminary Ridge which, like Oak Ridge, forms the west boundary of the Gettysburg Plain.

The Chambersburg Pike connects Gettysburg with Chambersburg and the Cumberland Valley and was the main route followed by the Confederates to Gettysburg. At the time of the battle a railroad reached Gettysburg from the east, and a grading without rails extended west from

Gettysburg through the fields of the above plateau and the 1 July battlefield. It parallels the pike about 150 yards to the north, and at Seminary Ridge is about one half mile from the Mummasburg Road. The railroad grading passes through steep rock-sided cuts, that through Seminary Ridge being at least fifteen feet deep.

The cut through Seminary Ridge is about three hundred yards long. At the time of the battle, the ridge north of the cut was wooded at its crest and on its east slope, and there was an orchard south of the cut on the west slope of the ridge. East of the ridge the grading sloped through a more shallow cut toward the center of Gettysburg.

As the Confederates of Gen. A.P. Hill's Corps advanced toward McPherson Ridge along the axis of the Chambersburg Pike at mid-morning on 1 July, two brigades of the Union First Corps rushed into position on McPherson Ridge to oppose them. The Union brigades had the aid of Hall's Maine Battery which took position on the south side of the west cut. Three regiments of Cutler's Brigade attempted to form on the west ridge north of the west cut, but before they could so so they were struck by Davis's Mississippi brigade. The Mississippians enveloped Cutler's right and forced most of these Union troops back to the woods on Seminary Ridge north of the cut. They moved from there over the railroad

grading to the shelter of the ridge where they reformed. At the same time guns of Hall's Battery retreated from their exposed position, some by way of the railroad bed. The Union position was reestablished, however, by a counter-attack on Davis' men whose lines had become disordered in their brief victory, and over two hundred of them were captured in the railroad bed west of Seminary Ridge.

There was a lull in the battle as reinforcements arrived for each side. A Union line formed on McPherson Ridge fronting west with Cutler's Brigade forming again north of the railroad bed. Shortly thereafter Confederates of Rodes' Division, Ewell's Corps, appeared on Oak Ridge to Cutler's right, and that brigade returned again to the shelter of the trees on Seminary Ridge north of the cut. The Union position on Seminary Ridge north of the cut was strengthened further when two brigades of Robinson's Division of the Union First Corps took position between the woods on the ridge and the Mummasburg Road. At about the same time three guns of Stewart's U.S. Battery took position at the edge of the woods adjoining the cut.

The Confederates attacked again, and there was hard fighting near the Mummasburg Road and in the arena in front of Seminary Ridge. The stronger Confederate forces prevailed, however, and drove Robinson's two brigades and

Cutler's Brigade from their positions on Seminary Ridge near the cut. Some of these Union forces fell back through the woods along the ridge to the railroad bed, and they retreated by it and across it to their new positions south of the town.

Stewart's Battery and its supporting infantry, including the 6th Wisconsin Regiment, were among the last Union troops to leave the field. From their position adjoining the cut to the north, three of Stewart's guns blasted Confederates advancing on the south side of the railroad, causing heavy casualties. Finally, when threatened with capture, Stewart's guns passed down the ridge slope adjoining the cut and crossed the railroad grading east of the cut. Stewart found the grading there strewn with boulders. One of his guns hung up among these boulders and was nearly captured. In the meantime the 6th Wisconsin marched from the ridge in line of battle, its right holding to the edge of the cut.

Stewart's Battery's departure ended the Union presence on Seminary Ridge. That evening shortly before dark, Johnson's Division of Ewell's Corp marched into the Gettysburg area over the Chambersburg Pike. Apparently it left the pike after crossing one of the arms of McPherson's Ridge and marched through one of the depressions to the railroad grading. It filed along the grading to the center of Gettysburg and continued along it to a point near the York

Pike east of Gettysburg where it filed into the fields there and formed for its attack on 2 July. On 2 July Watson's Battery, the 2d Richmond Howitzers, occupied a position just north of the cut and fired from there on Union batteries on Cemetery Hill. On the night of 3 July Ewell's Corps occupied Seminary Ridge, and Hupp's Virginia Battery took position beside the cut. Ewell's Corps remained in this area until it left Gettysburg on the morning of 5 July when it began its retreat to Virginia.

The railroad grading and its three cuts were highly significant terrain features during the battle of 1 July and figured importantly in it. The cut through Seminary Ridge was a barrier to Union troops movements along the ridge's crest and served as a passage way for both Union and Confederate units moving east and west in that area of the field. In a broader sense has been important as a part of the historic scene. The recent railroad construction has severely and irreparably destroyed the eastern end of the cut, the lip of the new excavation reaching to a few feet from the marker for Hupp's Battery. This reprehensible act might be mitigated, but it cannot be undone. We can hope that it prompts effective measures that will insure that such defilement does not occur again at Gettysburg or elsewhere within the National Park System.

May 7, 1994

The Honorable Mike Synar
Chairman
Subcommittee on Energy and Environment
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to describe the information available to U.S. Senator John Heinz and his staff in the summer and fall of 1989 regarding the issues surrounding the Gettysburg boundary. From 1985 through 1989, I served as a legislative assistant and a subcommittee staff director for Senator Heinz. During that period I was responsible for energy and environmental issues, among others.

Out of personal interest and concern for Gettysburg, I followed the progress of the boundary study quite closely, and persuaded Sen. Heinz to cosponsor the legislation that became the 1990 Gettysburg boundary. The measure was authored by U.S. Rep. William F. Goodling and U.S. Senator Arlen Specter.

In the fall of 1989, I went to Gettysburg for three purposes. They were:

- 1) To meet with the Park Superintendent, Mr. Dan Kuehn, prior to his retirement, to discuss the pending legislation;
- 2) To meet with representatives of Gettysburg College to discuss various issues then-pending before the Congress, including the boundary legislation;
- 3) To attend the kick-off of the centennial anniversary of President Dwight D. Eisenhower's birth, held at Gettysburg College and featuring a presentation by David Eisenhower.

The discussions with the Park Service staff ranged over many issues, but in particular covered my concern regarding potential development in and around South Cavalry Field. The railroad cut, a small provision in an otherwise large and complicated bill, was briefly touched on. In earlier discussions, via phone, with the

Superintendent, I had been given the impression that the Gettysburg Railroad would be moved to the "base" of Oak Ridge. I was further given to understand that in exchange for a few acres of park land, the College would surrender a scenic easement on over 40 acres of land. Both the Superintendent and the College's representatives indicated to me (in separate discussions) that this was a no lose proposition. At no time was I given any information that would have led me to suspect that Oak Ridge would be significantly altered by the land exchange in any way. I am of the opinion that Mr. Kuehn, who struck me as a very effective manager, was likewise in the dark. Mr. Kuehn, in a 1991 interview with Civil War Times Illustrated, indicated that he was unaware Oak Ridge would be excavated (see Civil War Times Illustrated, March/April 1992, p 64).

I first learned of the extent of the damage done to Oak Ridge in the spring of 1991. I had received a newsletter from the Council on America's Military Past (CAMP), containing several photographs of the devastation. I was utterly shocked. A few weeks later, I attended a Friends of the National Parks at Gettysburg meeting in Gettysburg, where I confronted the current Superintendent. I told him plainly, and in public, that the Senator's office had been misled. The confrontation was covered by the local media (see Hanover Evening Sun, May 5, 1991).

In closing, let me note that the debacle at the railroad cut is only the first step in the implementation of Public Law 101-377. At the time it was written, the bill was considered an effective compromise to overcome the Department of the Interior's reluctance to add land to existing National Parks, the local community's resistance to further growth of the Park, and the objection of area boroughs and townships to the deletion of valuable properties from local tax rolls. These objections were satisfied when the legislation all but prohibited the National Park Service from buying land in fee. Virtually all acquisition at Gettysburg National Military Park is to be done by easement. The landowner remains on the land and the Park Service gets the development rights while taxes are still paid. At the time, we thought this was a novel solution to a long-standing problem. 2200 acres were added to the National Park Service's holdings at Gettysburg, but only a few hundred of these were to be acquired in fee. The Park Service has already reached this limit.

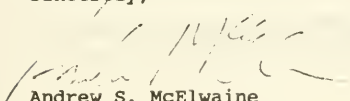
The easement process has been long and difficult. Each easement has to be custom fit to each land holder. The Philadelphia regional office of the National Park Service does not have sufficient personnel to carry on the long and difficult negotiations with each of several dozen property owners. And time is not on our side. In 1989, the Congressional Budget Office estimated that slightly over \$12 million would be required to protect the 2200 acres added to the Park in 1990. Next year, a commuter rail station will open in Frederick, Maryland -- a scant 30 minutes from the Park -- with direct service to downtown Washington, D.C. The park has only just begun to acquire easements

within the new boundary, and prices are set to explode. Rather than a repeat of Manassas -- where a single large development threatened a national park -- my expectation is that Gettysburg will die from a thousand blows. An intrusion here, a commercial establishment there, and so on until the viewshed is cluttered and the historic scene gone forever.

The Congress can prevent the loss of Gettysburg's historic scene. It can reopen the 1990 boundary and restore the Park Service's ability to acquire land in fee.

I appreciate this opportunity to provide this information to you.

Sincerely,



Andrew S. McElwaine

P.O. Box 3371
Pittsburgh, PA 15230

Mr. William P. Van Arsdale
August 5, 1990
Page 3

Summary and Recommendations

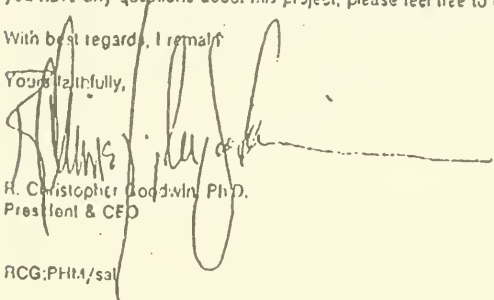
Archeological survey of the portion of Gettysburg National Military Park to be transferred to Gettysburg College showed that the proposed railroad line, spur, siding, and maintenance building will not impact any significant archeological resources, nor will they significantly detract from the ability of the National Park Service to Interpret the events of 1-3 July 1863 to the public.

Because there will be no impact to significant archeological resources, no additional work is recommended.

Thank you for this opportunity to be of assistance to Gettysburg College and the National Park Service. If you have any questions about this project, please feel free to contact us. We are at your service.

With best regards, I remain

Yours faithfully,


R. Christopher Goodwin, Ph.D.
President & CEO

RCG:PHH/sal

cc: Mr. Allen Cooper
National Park Service

R. CHRISTOPHER GOODWIN & ASSOCIATES, INC.



A HISTORY OF PETERSBURG NATIONAL BATTLEFIELD

TO 1956

by

Lee A. Wallace, Jr.

and

A HISTORY OF PETERSBURG NATIONAL BATTLEFIELD

1957-1982

by

Martin R. Conway

History Division
National Park Service
Department of the Interior
Washington, D.C.

1983

FLANK AND DEFENSE ROADS

The question of transferring a park road to state jurisdiction first arose within the Service in 1942 at the time 739 acres of park land were transferred back to Camp Lee. Only Flank Road was being considered; Defense Road was yet to be built.

The problem then--as it was increasingly to become--was one of insufficient land to protect park resources. Most of the land that was to comprise Flank and Defense Roads--along with the adjacent earthworks--was donated to the Federal Government with most of the owners retaining egress right to their properties.

As the urban sprawl continued and suburbs expanded, land adjacent to both roads became increasingly subdivided into building lots. This in turn placed considerable pressure on the Service to grant additional egress rights to the new property owners. The problem was further compounded by the Service's failure to develop and maintain a standard policy on the matter: Some superintendents granted special-use permits to use park lands as driveways, others flatly refused.

This problem with property owners resulted in Assistant Director Hillory Tolson's proposal in 1948 to transfer Flank Road to the state while the adjacent earthworks and fortifications remained under Park Service jurisdiction.¹ Based on this, a group of interested land owners petitioned the boards of supervisors of the two counties involved for approval of the transfer. Prince George

¹. Tolson to Watkins, Sept. 21, 1948, Petersburg File, Washington National Record Center.

County approved the motion, Dinwiddie County rejected it.²

Public opinion appeared to be against the transfer. A leading group of city officials made it clear to Superintendent George Emery that relinquishment of the road was to many, an indication of decreased Service interest in the area, and that putting the land to other uses would be breaking faith with the people responsible for the donations.³ Acting Regional Director Elbert Cox and Superintendent Emery, however, agreed to continue with the plan but to wait until "completion of the road project, at which time the Dinwiddie County board might conceivably see the situation differently."⁴

Four years later, in 1954, Regional Director Cox, in a move to transfer both Flank and the now completed Defense Road, wrote to Superintendent Floyd Taylor stating that the intent of Congress was to transfer to the states certain approach roads within the Park System. Flank and Defense Roads, in his opinion, were among those included. He asked the superintendent to review the matter and to take preliminary steps to initiate the action.⁵

Superintendent Taylor strongly disagreed that the roads should be transferred. He replied:

I am of the feeling that every reason which dictated the Service's decision to "keep the roads" still continues with even stronger justification. It has now been an issue and both sides have spoken. There is no known current agitation locally to reopen the issue. Even if

2. Ltr., Supt. to Reg. Dir., July 20, 1950, Pet. File, WNRC.

3. Ltr., Supt. to Reg. Dir., Aug. 11, 1950, Pet. File, WNRC.

4. Ltr., Act. Reg. Dir. to Supt., July 27, 1950, Pet. File, WNRC.

5. Ltr., Reg. Dir. to Supt., Aug. 13, 1954, Pet. File, WNRC.

we favored the transfer of roads, it will never be possible within the lifetime of numerous staunch individuals who have and can continue to muster sufficient support to defeat the plan. The moral obligation cannot be easily erased and we are currently making greater and greater use of the roads in question, as a part of the interpretive tour, and any relinquishment of the roads to permit unrestricted travel would certainly diminish if not destroy this significant and large section of the over-all Park Tour Route.⁶

More than 10 years passed before there were any further attempts to transfer the roads. But keeping Flank and Defense Roads under the administration of the National Park Service was not to be; relinquishing the roads was about to happen and it happened because three circumstances jelled at the same time:

1. Local governments willing and anxious to accept ownership;
2. Favorable acceptance by park management; and
3. A lack of public involvement.

Had any of these factors been otherwise, the roads would never have been transferred. This is what occurred.

In the mid-1960s, the city of Petersburg made known its intent to expand its boundaries south into Prince George County, an area that would include all of Defense Road and most of Flank Road. The state of Virginia eventually approved the expansion as proposed even though the county fought hard for its repeal.

About that time, City Manager Roy Ash accepted Superintendent John Willett's offer of transfer, subject, of course, to City Council's approval. This was followed by a Memorandum of Agreement that was drawn in the Regional Office

⁶. Ltr., Supt. to Reg. Dir., Aug. 26, 1954, Pet. File, WNRC.

in Richmond.

No local issue was raised at the time, and the question of why a municipality would want to assume responsibility for nearly 6 miles of roadway that was already being beautifully maintained and adequately patrolled by the Federal Government was never aired. One reason perhaps was that the city's bold plan to annex adjacent county territory dominated the news as well as the concerns and judgments of its leading citizens. For those who supported the transfer, the time was ideal.

Upon Congressman Watkins Abbitt's agreement to sponsor the bill, Superintendent Willet and Regional Director Cox traveled to Washington to present their supporting arguments to assistant Director Howard Baker. On learning of this meeting, historians in the Washington office became justifiably outraged, not only by the proposal to give away historic resources, but by being bypassed in the decision-making process.

On June 15, 1966, Historian Edwin C. Bearss wrote:

We feel that such action by the National Park Service will emasculate the Petersburg story. Except for the attack of July 30 at the Crater, all Union movements aimed at compelling the Army of Northern Virginia to abandon Petersburg from June 18, 1864, were directed against the Confederate right. The loss of Flank and Defense Roads will defeat the purpose of acquiring the area of Five Forks because we will have given up vital ground in telling the story of ten months of Union effort to turn Lee's right.

Along these roads are the best preserved earthworks in the battlefield, including Fort Fisher, the largest Civil War fort in the United States. Experience at Vicksburg, where land was conveyed to the city with a reservation that the city fathers were to maintain these lands in a "Park-like manner," has shown that real estate developers will lose little time in calling in their bulldozers and leveling the earthworks as soon as they are no longer protected by the Service.⁷

⁷ Ltr., Bearss to Chief Historian, June 15, 1966, Pet. File, WNRC.

Historian Roy E. Appleman added:

The whole proposal cannot be justified historically, and it points up the present failing of the NPS to have and use a responsible evaluating body at the Washington office to consider and advise on such matters.⁸

In a three-page memorandum to Director George B. Hartzog, Regional Director Elbert Cox replied:

I appreciate the opportunity to offer explanation and comment concerning position papers by Mr. Appleman and Mr. Bearss who believe that the proposal to transfer portions of Flank and Defense Roads in Petersburg National Battlefield is a mistake.

I believe that I understand the reasoning presented by Messrs. Appleman and Bearss. On the basis of historical evaluation, I would be entirely in accord with their recommendation. When it comes to making administrative determinations in which other factors must be weighed--over-all value of historic features in presenting the interpretive story for which the Park was established, operating costs for maintenance and interpretation, and certain other relationships, such as public relations--I believe that our conclusions are valid.

I am aware of the basic responsibility of the National Park Service for Historical preservation. I have been concerned along with others about the process of resource erosion which has occurred in many of our historical areas, especially in the Civil War battlefields. The hard reality is that the narrow strips of land acquired initially by the War Department were minimal at the time and became increasingly inadequate as urbanization, industrial development, and similar changes occur. As a matter of fact, the Master Plan concept for many of our historical areas, particularly Petersburg and Fredericksburg, in the thirties proposed greatly increased acreage beyond what we presently own or expect to acquire. Land acquisition necessary to support a proper park development could have been accomplished twenty years ago, but funds were never available. In evaluating a situation such as that at Petersburg today, we face an entirely different set of conditions than existed in the thirties.

The campaign involves over 170 square miles of battlefields, both major and minor. It has long been recognized that it would be neither feasible nor practical for the Federal Government to own or control the major portion of this property. Of the eighteen battles and military events concerned with the siege of Petersburg, only three, the opening battle (which set the stage for the siege), the battle of the Crater (the most unique in the war), and the battle of Fort Stedman (Lee's last offensive) have substantial areas within the Park boundaries. These three areas we believe to be the most important and significant in the Park for both preservation

8. Ltr., Appleman to Chief, Div. of Interpretation, June 22, 1966, Pet. File WNRC.

and meaningful interpretation. These are also the areas which receive by far the most legitimate visitor use.⁹

That memorandum may have placed a self-imposed gag order on further opposition within the Service. Nearly six years passed without any evidence of any opposition from any source. In fact, it was seven months after Congress authorized the transfer, that Washington-based historians made inquiry as to the status of the transfer proposal.¹⁰

Superintendent Conway, who came after Willett, favored the transfer. He believed that since the earthworks would remain under the protection of Federal law, they would continue to be looked after by the Park Service. He was concerned that increasing amounts of park resources were being committed to maintaining and patrolling roads that had become heavily used urban thoroughfares with little use by park visitors. He did insist, however, that, because of the area's major historical importance, Fort Wadsworth should be retained by the Service, which it was.

The Act of April 11, 1972 (92-272), had authorized the transfer, and on February 8, 1973, Superintendent Larry Hakel presented the deed to City Manager Lewis Z. Johnston. (A copy of the subject act is found in the Appendices.) As to be expected, the preliminaries to the transfer required much time and effort on the part of the principals in the wording of the deed. Following the transfer, there were many discussions, meetings, and onsite inspections with city officials, planning commissions, and property owners on interpretation of the deed and the National Park Service's intent.

The concerns of many historians that once transferred, the earthworks would be abused by Park Service irresponsibility toward its trust in lands no

9. Ltr., Cox to Hartzog, July 27, 1966, Pet. File, WNRC.

10. Ltr., Harry Pfanz to Robert Utley, Nov. 17, 1972, Pet. File, WNRC.

longer under its direct management, were quickly laid to rest. Quite early, an alert and conscientious superintendent, Wallace B. Elms, demonstrated that the Service takes seriously that trust especially where it was stated:

"no new streets, entrance drives, or other developments shall be constructed in such a manner as to adversely affect existing forts, historic earthworks or other historic features."

The original legislative support data for the transfer of the roads erred in stating that all of Flank and Defense Roads were within the city limits of Petersburg; a 1.2-mile section of Flank Road was in Dinwiddle County. State and county officials agreed to accept this section of the road on condition that the protection in perpetuity of the earthworks would in no way be stipulated in the deed of transfer. County officials indicated that, instead of maintaining the area in a park-like condition, they would sell the land not needed for roads to private landowners. Charles Marshall, director of the NPS Virginia State Office, thereupon recommended the road be retained by the Service:

Following our meeting with the County officials Superintendent Hakel, Pete Shedd and I made a windshield inspection of the 1.2-mile section of Flank Road. We found that there would be no way for us to grant even the minimum required right-of-way to the State without giving up a substantial amount of earthworks which would fall within the right-of-way.

In view of the strong position we have taken elsewhere on the preservation of park values threatened by highway development, and in view of our obligation to the Congress and the public to protect historical remains, we concluded that the long term interest of the public and the Service dictates that we not transfer the 1.2-mile section of Flank Road to another jurisdiction.¹¹

Some two years after the transfer, Superintendent Elms unofficially learned that the city planned a nursing home on property adjacent to Flank Road and had plans to cut a culvert through the earthworks there for a sewer line.

11. Ltr., Dir. V.S.O. to Dir, Northeast Region, March 26, 1973, P.N.B., Ltr., Hakel to Conway, Oct. 29, 1982.

Elms immediately notified the regional office, resulting in a letter from Regional Director Chester Brooks to City Manager Lewis Johnston that approved the project provided that the sewer line were tunneled under the earthworks, not throught it; also that the city keep the Park Service informed of any future projects that might affect any of the transferred earthworks.¹²

As a result the city notified the Service of its plans to realign Flank Road at the Highway 301 intersection. This was subsequently approved as it in no way impacted nearby Fort Davis.

The city, however, in an apparent act of defiance, cut through the earthworks for the sewer line without notifying the park. An outraged Superintendent Elms requested that the Solicitor draft a letter to the city on the legal ramifications of the city's action; also that a policy meeting be held with the Regional Director to clarify the responsibility assumed by both parties, when the roads were transferred.¹³

As a result, the city was duly informed:

1. That the City of Petersburg has the responsibility to comply with the law;
2. That the National Park Service will continue to monitor city programs affecting the transferred land; and
3. That the city should apply to have the transferred earthworks added to the National Register of Historic Places.¹⁴

In 1979, Superintendent Elms again became concerned about the possibility that Flank Road would be used for heavy commercial traffic, the result of a proposed factory complex to be built about a quarter of a mile from the

12. Ltr., Brooks to Johnston, Jan. 1976, Pet. File, WNRC.

13. Ltr., Elms to files, Aug. 20, 1976, P.N.B.

14. Ibid. As of 1981, the deeded earthworks were not listed in the National Register. This indicates that the city had not made application for such action. (Telephone interview, Karen Rehm to Conway, Oct. 26, 1982.)

road. The city subsequently informed the Service of its "commitment to improve Halifax Road for heavy truck traffic and to preserve the historic nature of Flank Road."¹⁵

Thus, the park continues to protect--as it should--those impressive and irreplaceable historic earthworks at Petersburg, in accordance with its legislative obligations. But, in 1982, the pressures of ongoing development continue to impact the Flank and Defense Road areas with an accumulative number of driveways and utilities developed over the years.

Former Superintendent Elms, in retrospect, questions the Service's wisdom in conveying these roads to the city and the ability of all parties to live up to the letter of the legislation. He does not believe that the earthworks on these lands are "well protected." To make matters worse, is the moral issue--the National Park Service divested itself of lands that had been donated to the American people.¹⁶

15. Ltr., William Cook to Richard Stanton, Apr. 3, 1979, Pet. File, WNRC.

16. Telephone interview, Elms with Bearss, Sept. 2, 1982.

EXHIBIT #2

PARTIAL TRANSCRIPT OF AUDIO TAPE RECORDING, BOUNDARY STUDY
WORKSHOP, SEPTEMBER 14, 1988.

JONATHAN DOHERTY (moderator/NPS spokesperson): "...delete all or part of eight small areas that are not longer needed for park purposes for a number of reasons. Those total approximately 25 acres, and those are identified on the maps and they're so small that it's difficult for me to point them out. I'd be glad to talk about any of those that you have questions on."

Question and answer session:

- question by JIM COLE: Where will the railroad tracks be rerouted at Gettysburg College?

JONATHAN DOHERTY: "There is a the Gettysburg Railroad that essentially runs through a portion of the Gettysburg College Campus, here. It is proposed to be moved/rerouted from the railroad line here, connecting with the railroad line here, closer to, just within, in fact, the existing park and continue up here, and essentially this would help facilitate that in a way that involves a minimal amount of park land that is not critical for interpretation. Is that specific enough?"

JIM COLE: "What is being done to the railroad, is it being moved immediately to the side?"

JONATHAN DOHERTY: "It's being moved, it would potentially be moved approximately, a little less than a quarter of a mile to the west. And...we would not be, that's not our action, it's a private action that's being taken by (inaudible) and the College."

GEORGE SHEALER: "Yeah, but that sounds like you're taking it off the College land and putting it on Government land."

JONATHAN DOHERTY: "Well, its actually..."

GEORGE SHEALER: "You're trading Government land, you're giving the College land, in other words."

JONATHAN DOHERTY: "It's essentially right along the park boundary. There's a small fifty-foot wide section in that area."

GEORGE SHEALER: "Of Government land."

UNIDENTIFIED: "Jonathan, would this affect the park adversely?"

JONATHAN DOHERTY: "Uh, no. We would tie the construction in with an archaeological investigation that there are no known disadvantages."

GEORGE SHEALER: "The base of Oak Ridge, in other words?"

JONATHAN DOHERTY: "...Yes."

GEORGE SHEALER: "Basically the base of Oak Ridge."

Exhibit # 3

Borough of Gettysburg-Planning Commission
Minutes
February 20, 1989

The Gettysburg Planning Commission met on February 20, 1989 at 7:30 p.m. in Council Chambers with the following members present: Andrew Larson (chairperson), Bill Frassanito, and Betty Myers. Also present were Dr. Walter Powell of Interfaith Housing and William Van Arsdale of Gettysburg College.

The meeting was called to order by Chairman Andrew Larson; the minutes from last month's meeting were read and approved.

Dr. Powell expressed his concern that the Borough is losing some of its modest, single-family housing to professional and commercial interests. Dr. Powell pointed out the proposed use of 424 S. Washington Street as an example. The Gettysburg Health Care Corporation is asking permission to use the house for office space; the house is located in an area that is historically residential. Dr. Powell asked the Commission to consider the long term needs of the Borough when allowing professional and commercial businesses to be located in residential properties. Chairman Larson noted that special exceptions are hard to deny as long as they meet other requirements of the ordinance. Mr. Larson then read a note he had received from Borough Council President Harry Stokes which suggested that the Commission consider requesting a moratorium pending legal opinions and Borough Council's decision in dealing with the R-2 district problem. Bill Frassanito agreed with Mr. Stokes' suggestion, expressed his concern of the number of offices located in R-2 districts, and proposed that the issue be investigated. Betty Myers moved that a letter be drafted to the Zoning Board expressing these concerns. Bill Frassanito seconded, and the motion carried favorably.

Mr. Larson informed the members that he had resigned from the Zoning Board effective immediately due to a recent ruling that a person cannot serve on two boards simultaneously. The Commission then dictated a letter to be sent to the new chairman of the Zoning Board.

Mr. William P. Van Arsdale, Treasurer of Gettysburg College addressed the Commission concerning his thoughts and ideas on the proposed changes in the plant facilities of the College. Mr. Van Arsdale stressed that these thoughts and ideas were his own and that they did not necessarily represent those of Gettysburg College. The Commission found the presentation quite interesting and thanked Mr. Van Arsdale for sharing this information with the Commission.

Mr. Larson reminded the members of last month's discussion on subdivisions, and informed the members that a model ordinance has been written by Mr. John White.

Because two of the members were absent, elections were postponed until the March meeting. The recording secretary was instructed to send out a postcard to each member prior to the March meeting informing them of the elections and urging them to attend.

Bill Frassanito moved that the meeting adjourn, Betty Myers seconded. The meeting adjourned at 9:30 P.M.

Respectfully submitted,

Joye Sprague

Exhibit # 4

Gettysburg College

Gettysburg, Pennsylvania
17325 1486
(717) 337 6010Charles E. Glassick
President

February 8, 1988

Dr. Walter L. Powell
Executive Director
Gettysburg Battlefield Preservation
Association
P. O. Box 1863
Gettysburg, PA 17325

Dear Dr. Powell:

Please accept my apology for the delay in replying to your letter regarding the fill which is being added to the College's playing fields. I travel a great deal during the months of January and February and do fall behind in my correspondence.

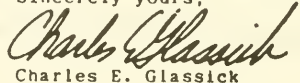
In order to reply fully to your concern, I need to give some historical information. Several years ago I met with representatives from the Park Service including the Superintendent here and the regional representative, and discussed the use of the lands which you question. At that time the Park Service did not wish to purchase the land from us but simply requested that we refrain from building structures on that land. They did not offer to purchase development rights or the land itself. Nevertheless, we voluntarily agreed not to use the land for structures because of its historic significance. Therefore, the College has not and will not build dormitories, etc. in that area. There was an agreement that the College would and could use the land for playing fields.

We have lived up to that agreement completely. Before the current developments were undertaken the plans were shown to representatives from the Park Service here. Again, there was no offer to purchase development rights nor was there any request for maps, pictures, etc.

The College intends to continue its concern for historic preservation of Gettysburg and the battlefield. We will voluntarily continue to refrain from building structures on the land but we do intend to play there.

I hope this puts your mind at ease regarding our intentions and future uses of this land. Best wishes.

Sincerely yours,



Charles E. Glassick

jmu

Exhibit #5

**Advisory
Council On
Historic
Preservation**

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

MAY 6 1994

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

REF: National Park Service Transfer of 7.5 Acres
to Gettysburg College

Dear Mr. Synar:

This letter is in response to your request that the Council provide the Subcommittee with an opinion regarding compliance with Section 106 of the National Historic Preservation Act for the referenced undertaking. Based upon a review of our files, it appears that the National Park Service (NPS) did not formally complete its responsibilities under Section 106 prior to the transfer of the parcel.

As you know, Section 106 requires that Federal agencies take into account the effect of their undertakings on historic properties and provide the Council with an opportunity to comment. These mandates are fulfilled through compliance with the process set forth in the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800). While NPS initiated this process for the transfer, it does not appear that the process was ever formally brought to closure.

In 1988, NPS requested that the Pennsylvania State Historic Preservation Office (SHPO) review the Draft Boundary Study for Gettysburg National Military Park. This study identified the proposed transfer, but did not, by nature of the document, provide any specifics regarding the proposal. In response, the Pennsylvania SHPO indicated that an archeological survey of the area in question was necessary. Although such a survey was later undertaken by Gettysburg College, we have no evidence that NPS ever formally submitted the survey results and a detailed description of the transfer to the Pennsylvania SHPO prior to disposal of the parcel. Such a submittal would have been the

appropriate step toward responding to the concerns that had been previously voiced by the Pennsylvania SHPO and bringing the Section 106 process to closure.

By not formally corresponding with the Pennsylvania SHPO, NPS not only did not follow the letter of the procedure set forth in the Council's regulations, the agency also lost control over ensuring the sufficiency of information provided to the SHPO regarding the proposed transfer and railroad relocation. In connection with a separate review involving an Interstate Commerce Commission (ICC) action regarding the railroad relocation, the Pennsylvania SHPO determined that there would be no effect on historic properties. Given this, we can appreciate that NPS may have believed that all substantive issues regarding this transfer had been adequately resolved. However, the fact remains that without formal correspondence between NPS and the Pennsylvania SHPO there was no way for NPS to know and to document that the SHPO had been provided with adequate information.

We hope that this information will be of assistance to the Subcommittee. If you have any further questions, please feel free to contact me at 606-8503.

Sincerely,

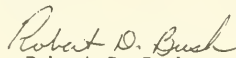

Dr. Robert D. Bush
Executive Director

Exhibit No. 7

GETTYSBURG

Gettysburg College

Gettysburg, Pennsylvania
17325-1486
(717) 337-6010

Gordon A. Hazland
President

November 5, 1991

Dear Trustees:

As you know, I believe that it's quite important for all of you to be kept informed of major campus events, so I'd like to tell you of some of the recent goings-on here that I think you would be particularly interested in. This fall has been an exciting time for Gettysburg College. Those of you who attended the Cupola Society dinner on September 28 got a taste of the enthusiasm and excitement that our Campaign for Gettysburg is creating. Those feelings are multiplying here on campus; on October 23, Chuck Anderson, Ed Johnson, and I hosted a luncheon for all college employees and a group of selected students to celebrate the kick-off of the public phase of our campaign. The response to the vision of Gettysburg represented by this Campaign both from those on campus and from friends of the College off campus has been most gratifying.

You should also be aware that on October 12, we had a major meeting of Greek alumni, national representatives, and current undergraduates. This meeting was designed for the purpose of encouraging positive dialogue between all involved groups now that several months have passed since the nationals signed the Greek standards and expectations document. Specifically, we presented a proposal for a new maintenance organization for the fraternities and some plans to help them to begin to raise money for their houses. We also discussed plans for the new sorority chapter meeting rooms. Unfortunately, due to difficulties that we had in getting permission from our local Historic and Architectural Review Board, construction was delayed and the chapter rooms will not be completed before spring rush. However, we are helping the sororities to find suitable locations until they can move into their new facilities. Overall, the meeting was a very positive one and exemplifies the cooperative relationship that we are establishing between the College and the Greek organizations.

On a less positive note, we have recently received word that the Gettysburg Battlefield Preservation Association is suing the College, the Gettysburg Railroad, Secretary of the Interior Manuel Lujan, and the National Park Service about the relocation of the railroad tracks. The suit alleges a number of violations of state and federal procedure, which we have analyzed carefully. According to Counsel Robert McQuaide, the issues raised are entirely without merit, and we intend to vigorously oppose this action. I will keep you informed of further developments.

As you know, our next Board meeting is scheduled for December 6-7. We are planning to begin the meeting around noon on Friday and will conclude by mid-afternoon on Saturday. At this particular meeting, we expect to give all of you an opportunity to tour our new student housing at the Ice House Complex and at the Majestic, and to spend some time with our students talking about their perspectives and concerns. You might also be interested in knowing that the annual Christmas choir concert will be held that Saturday evening. In addition, we are planning some activities for your spouses and guests. We have reserved rooms at the Gettysburg Hotel for you. Please return the enclosed card to confirm your reservation.

I look forward to seeing you next month.

Sincerely,

Doc. Jim

Gordon Hazland

passed along to me your letter concerning the suit recently filed by the Gettysburg Battlefield Preservation Association. We have in attached white paper to address concerns such as those you have raised. I would be interested in hearing your reaction to this document. Please accept my best wishes for the holiday season and good luck in the suit.

Gordon A. Hazland

Handwritten notes on the left margin:

- Don't know all the facts of issue - on the surface I am in sympathy with the GBPA. In this issue, on my view of the GBPA, I reserve an arrogant attitude toward its position.
- Provides a number of points for discussion.
- College administrators are a major issue.
- Gettysburg College, I should be deal with.
- To all places, I should be deal with.
- revenue to the issue.
- Jim 11-20-91

Geneva

Before building —

AUG 24 1983

Colleges must discuss plans

By JEAN JONES

GENEVA — City officials say Hobart and William Smith Colleges may not build anything in the St. Clair Street area until college officials meet and discuss their proposed building plans with residents and city officials.

Such a meeting must take place before the city will consider allowing the colleges to build a road and maintenance garage on property at 282 St. Clair St., the city council promised 15 residents of St. Clair and Jay streets last night.

Five of the residents objected to the colleges' building plans, saying that a road and maintenance garage would increase traffic in their area, devalue their properties and "take away from the residential character of the neighborhood."

"What I'd like to know is what kind of road they (the colleges) intend building on that property," said Alfred Cervo, 283 St. Clair St. He said he had been told by a college official only that an existing drive on the college-owned property at 282 St. Clair St. would be widened and lengthened.

"But we'd like to know if it's going to be an access road, a thoroughfare from St. Clair Street to Hamilton Street," said Cervo.

Cervo and other St. Clair and Jay Street residents who met Tuesday night to discuss the colleges' plans, said expansion of the driveway is

the first phase of a three-phase college building plan.

The residents said they've learned that the colleges ultimately plan to build one or more maintenance garages on the rear of the property at 282 St. Clair St. A college maintenance garage on Hamilton Street will be removed to make room for construction of a college motel at Pulteney and Hamilton streets, the residents said.

Dan Belliveau of 275 St. Clair St. said he understands the colleges must have a special use permit from the city in order to carry out their construction plans. He requested, but was unable to get an opinion from City Attorney Michael Roulan on whether the city would give the colleges such a permit. Roulan said he would consult with acting City Engineer Herbert Anderson, the city's building and zoning officer, and let St. Clair Street residents know what Anderson plans to do.

John Fouracre, First Ward councilman, said a college official assured him yesterday that "nothing will take place" until college President Carroll Brewster, now away on vacation, returns to Geneva.

"I certainly hope that's the way it is," said Dr. Leon Schofield, 232 Jay St.

He asked about a committee of city and college officials formed

three years ago by Mayor Giles Reynolds and former college president Dr. Allan Kuusisto. Schofield noted that the committee was formed to keep "open" and strengthen communication between the city and colleges.

He said he understood it met "exactly twice" because Reynolds said it failed to continue the meeting "because we were never called (to meet) by the colleges."

Well it should never have ceased and it should be started up again, said Anthony Valentino, Third Ward councilman.

But it takes some leadership to call a meeting, commented Fouracre, who is vying with Reynolds for the Republican nomination for mayor in the November election. Fouracre frequently has criticized Reynolds for what he says is Reynolds' "lack of leadership ability."

Both Reynolds and Frank Cecere, councilman-at-large, said they recently attended a college town-gown committee meeting where they learned about college construction plans in the St. Clair Street area. Cecere discussed the plans, saying he felt nothing should happen until the college officials reveal and talk over their plans with the residents.

Neighbors upset at college plans

By JEAN JONES

GENEVA — Residents of Jay and St. Clair streets who are opposed to plans by Hobart and William Smith Colleges to build one or more maintenance garages in the neighborhood plan to voice their objections at a city council meeting tonight at 7:30.

About 25 residents met last night at the home of Betty Jane and John Oughterson, 289 St. Clair St., to discuss whether the city can stop the colleges from building in the neighborhood.

"I feel like I've been through this script before," said Dr. Leon Schofield of 232 Jay St. Schofield was involved in the 1980-81 dispute between the colleges and residents over the colleges' development of a 5.5-acre athletic field between Jay and St. Clair streets.

Schofield explained that that dispute — which included a seven-month battle in state Supreme Court — resulted in a city law that requires the colleges and other educational institutions to obtain a special use permit to alter their property.

But the residents questioned last night whether the colleges need such a permit to build a road off St. Clair Street to their main athletic field on Hamilton Street.

College officials have indicated they plan to start construction of the road on land the colleges own at 282 St. Clair St., the residents said. The thoroughfare is a first step toward construction of the maintenance facilities, the residents added.

Schofield, the Democratic candidate for the First Ward city council seat in the November election, urged homeowners to question city council tonight about its interpretation of the special permit law and the council's position on college building plans.

Although the residents said college officials were invited to last night's meeting, no college representative appeared. College spokesman Gordon Brown said earlier yesterday that college treasurer William Van Arsdale had recently spoken with some individual residents about the college road-building plans. But, said Brown, Van Arsdale has been unable to meet since with homeowners as a group and did not

receive an invitation to last night's meeting.

Contacted yesterday by the Times, Van Arsdale refused to comment on the colleges' building plans.

Ms. Oughterson said Sharon Bes, executive director of development for the colleges, had told her the college President Carroll Brewster away on vacation, but wants to meet with residents when he returns home Aug. 28.

"Sharon said to take her word for it that there's nothing definite about college plans (in the St. Clair Street area)," said Ms. Oughterson. "She said there's only lots of potential and plans and that no one should get angry. We should act in a orderly way."

The residents told Ms. Oughterson to ask Brewster to stop any road work until after he's returned home and had time to talk with them.

The residents also said they believe the colleges are withholding information about their planned expansion and growth.

"They're not telling us for reason," said Toni Flores, whose property at 275 St. Clair St. adjoins the colleges' athletic field.

It was noted that the college have one large maintenance bar off Pulteney and Hamilton streets adjacent to land college officials are considering as the site for an inn.

"But they're (the colleges) going to need garage space for parking room for the Inn," said Schofield.

Another homeowner noted that removing the maintenance building near the south side of Hamilton Street will also "beautify" the area. "So in an effort to beautify the area off Pulteney and Hamilton Streets, we get the maintenance buildings and traffic and congestion connected with it," Schofield said.

College building plans were discussed at a meeting last week and college officials who composed a "town-gown committee." Neither college or city official, however, have publicly disclosed those plans and the St. Clair Street residents said last night they suspect the colleges are trying to force the off their property in order to "squat off" college campus lands in the Jay-St. Clair Streets area.

Exhibit #9



IN REPLY REFER TO:

D18 (MAR-PD)
Gettysburg Boundary Study

United States Department of the Interior

NATIONAL PARK SERVICE

MID-ATLANTIC REGION
143 SOUTH THIRD STREET
PHILADELPHIA, PA. 19106

23 JUN 1987

Dr. Gabor Boritt
Civil War Studies
Gettysburg College
Gettysburg, PA 17325

Dear Dr. Boritt:

Thank you for returning my call today. I am sure that you are extremely busy the week before the Civil War Institute.

I am enclosing a copy of the news release for the Gettysburg National Military Park Boundary Study. It should provide you with more detailed information than I could over the telephone. We appreciate your interest in the study and hope that you can attend the workshops. As I mentioned, the first is scheduled for July 8, at 7:00 PM in the cafeteria of Gettysburg Junior High School. At that meeting we will be asking those in attendance to help us identify the national and local issues and concerns related to the Boundary Study.

I will be in touch with you as soon as possible about someone to make a short presentation at the Institute. Certainly, this is an opportunity to contact people which we do not want to pass up.

If you have any questions about the study, please feel free to contact me at (215) 597-6479.

Sincerely,

Jonathan L. Doherty
Division of Park and Resource Planning

Enclosure

Year of
the
Visitor

Exhibit # 10



Transportation and Distribution Associates, Inc.
 1818 Market Street
 Philadelphia, PA 19103
 215/299-6660

975-6650

September 11, 1987

Mr. William P. Van Arsdale
 Treasurer/Business Manager
 Gettysburg College
 Gettysburg, PA 17325

Re: Railroad Relocation Study

Dear Mr. Van Arsdale:

Transportation and Distribution Associates, Inc. is pleased to have this opportunity to submit our proposal for a Railroad Relocation Study. Our proposal is based on information and plans furnished by you at our meeting August 25th, a brief tour of the property, and our general knowledge of railroad engineering and operating needs.

In order that we might prepare a meaningful scope and at the same time establish a common basis for communicating our proposal effort, we have prepared two small scale sample sketches which are included in the Appendices of the proposal. As a part of the actual study work, and based on extensive data gathering and application of agreed upon design criteria, we would prepare scaled drawings of final conceptual plans.

The attached proposal discusses our understanding and approach to the study, and our proposed fee arrangement. We respectfully request that this proposal, either in full or in part, not be shared with our competitors without our consent.

We look forward to having the opportunity to work with you on this interesting and challenging project. If you have any questions please call me or Robert Sutton.

Very truly yours,

Charles H. Davis, Jr.
 Senior Vice President

CHD:gje
 0110/05713/0220
 Attachment

PROPOSAL
FOR A
RAILROAD RELOCATION STUDY

Prepared for
Gettysburg College

Prepared By
Transportation and Distribution Associates, Inc.

September 11, 1987

Transportation and Distribution Associates, Inc.

II - UNDERSTANDING OF PROJECT

Transportation and Distribution Associates (TAD) understands that the primary objective, or end product, of the project is to minimize the impact of the railroad presence on the college property. In order to meet this objective the interests of the several individual parties must be given careful consideration. A plan must be selected and presented which is acceptable to all. Our preliminary review indicates that the special interests of the several parties are as follows:

- o College The College desires to pursue a master plan for development of their facilities which is not restricted by railroad operations and which incorporates student safety and campus beautification.
- o Railroad The Railroad desires good access for tourist traffic, ample equipment storage properly protected from vandals, and a suitable track layout for efficient operations.
- o Park The Park desires to preserve historic property and provide the public with attractive recreational areas.
- o CSX The Chessie System desires to maintain its excessive dimension routing via the Railroad.
- o PaDOT PaDot desires to preserve essential rail transportation in the state.

A more thorough analysis to determine whether there are additional parties and/or interests which are to be considered in this planning study will be one of the first orders of business.

It is of particular importance to present all the real and potential advantages of the available options to each of the

Exhibit # 11



FEB 26 1988

Transportation and Distribution Associates, Inc.
1818 Market Street
Philadelphia, PA 19103
215/299 8080

February 24, 1988

Mr. William P. Van Arsdale
Treasurer/Business Manager
Gettysburg College
Gettysburg, PA 17325

Re: Railroad Relocation Study

Dear Mr. Van Arsdale:

As an introduction, I accompanied Chuck Davis on our trip out to visit you regarding the proposed relocation of the Gettysburg Railroad. He briefed me on the last conversation he had with you in which you indicated that the project would be delayed in part because of the legislative action account of the National Park Service land involvement.

I understand that there are several other interests to be considered before this important project can move forward. However, should the Park Service problem be viewed as a major slowdown, it has occurred to me that you may want to consider a revised alignment. I have sketched in one route which I believe to be practical. From the plans it would appear that a minor encroachment of the pond is required. On-site inspection will be needed to verify the extent. In any event, having an alternative alignment which offers a relocation without using Park property may be useful in negotiating better terms for your First Day Battle lands.

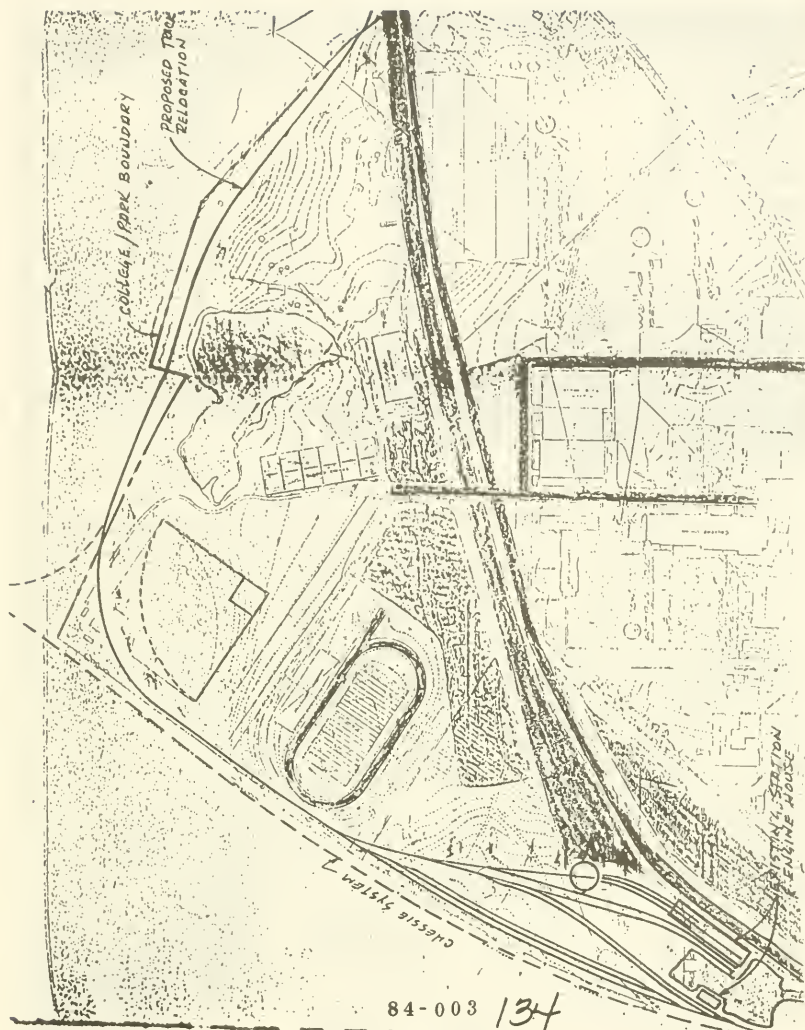
If we can be of further assistance, please call me.

Very truly yours,

A handwritten signature in cursive script, reading 'Robert P. Sutton'. The signature is written in dark ink and is positioned above the printed name.

Robert P. Sutton
Transportation Consultant

RPS:apw
05713/0220/1110



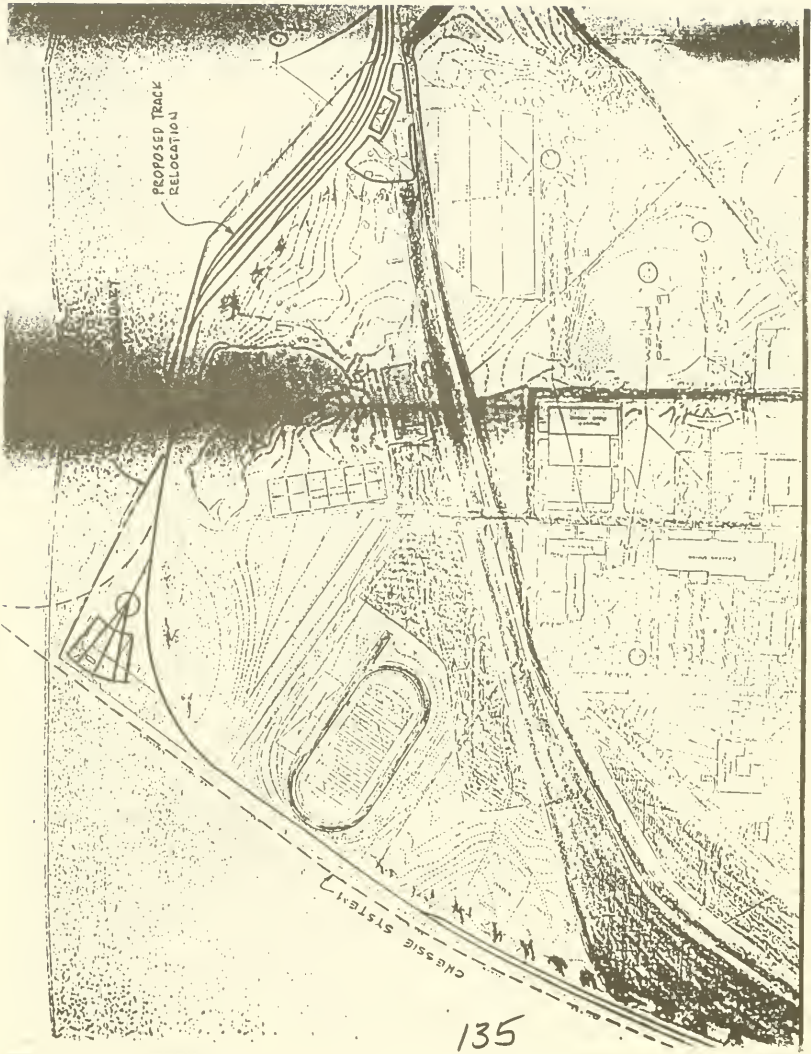


Exhibit #12

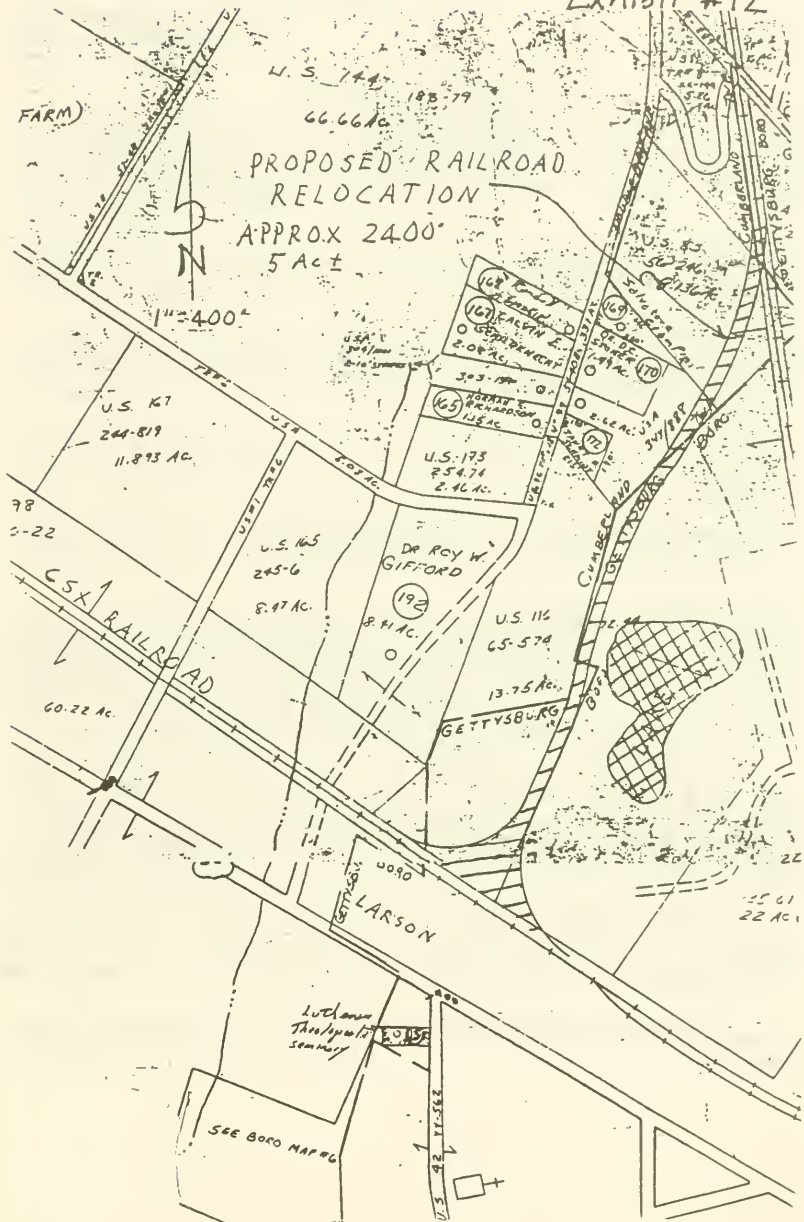


Exhibit # 13

SWOPE, HEISER & McQUAIDE
ATTORNEYS AT LAW
104 BALTIMORE STREET
GETTYSBURG, PENNSYLVANIA 17325

DONALD M. SWOPE (1913-1982)
HENRY O. HEISER, III
ROBERT L. McQUAIDE
ELLEN M. AVERETT
ROY A. KEEFER

P. O. BOX 368
TELEPHONE 1717 334 2134

DONALD SWOPE (1907-1940)
SWOPE BROWN & SWOPE (1940-1956)
BROWN, SWOPE & McPHAIL (1956-1966)
DONALD M. SWOPE (1966-1969)
SWOPE & FRAZEE (1969-1980)

April 19, 1988

Sloan Cornell, President
The Gettysburg Railroad
P. O. Box 745
Gettysburg, PA 17325

Daniel J. Sweeney, Esquire
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Avenue, N.W.
Washington, DC 20006

Re: Relocation of tracks

Gentlemen:

It was a pleasure meeting with you on Friday. As agreed, this letter shall be an attempt to summarize the various understandings reached at that meeting.

Gettysburg Railroad (the "Railroad") shall attempt to purchase the line between Gettysburg and Carlisle junction from the Commonwealth of Pennsylvania (the "Commonwealth"). The Railroad shall convey the land and one building (the Railroad's office) lying between South Washington Street and a point west of the Mummasburg Road unto Gettysburg College (the "College"). The Railroad shall, at its expense, undertake to remove the buildings (except the office), track, railroad equipment, etc., on the land conveyed to the College, leaving it clear and rough graded.

In consideration, the College shall enter into a long term lease with the Railroad leasing the former Reading passenger station, now known as Tommies Pizza, for a nominal consideration. The lease shall include the right of the Railroad to renovate and restore the station building and use it for passenger service. The lease shall be net, net, net.

The Railroad shall also have the right to construct, use and maintain a paved parking lot adjacent to the station on the west side. The College shall also agree to provide the Railroad with a license agreement to permit customers of Railroad's passenger service to park in the College parking lots on designated occasions.

The Railroad shall have the right to lay and use one set of tracks to the south of the station for the purpose of loading and unloading passengers.

SWOPE, HEISER & McQUAIDE

Sloan Cornell, President
 Daniel J. Sweeney, Esquire
 Page 2
 April 19, 1988

The College shall convey a 50 foot wide right of way from the northernmost point of the aforesaid grant from the Railroad, running in an approximate straight line south to a point of intersection with existing CSX tracks. The said right of way is intended to relocate the Railroad's (now Commonwealth's) track to the westernmost perimeter of the College campus.

The aforesaid relocated track shall have a "Y" junction at its southernmost point to permit trains to enter the CSX track in either a westerly or easterly direction. The "Y" shall be located in the vicinity of homeplate at College's existing baseball diamond.

The College shall also convey to the Railroad sufficient land in and around the "Y" to permit the Railroad to build, use and maintain an engine house large enough to house two engines. It is estimated that the land requirements at the "Y" shall be approximately one acre.

The College shall pay a money consideration to the Railroad in an amount yet to be determined. In arriving at the amount, the parties are going to give due consideration to the current value of the land to be conveyed by the Railroad, with improvements, as well as the current value of the land to be conveyed or leased by the College, with improvements. The cash difference to be paid by the College will be paid to the Railroad at or near the time of purchase of the railroad assets by the Railroad from the Commonwealth.

It is further contemplated that the project shall take less than one year from the time of closing between the Railroad and the Commonwealth. All permits necessary for the relocation of the tracks, etc., shall be acquired by the Railroad. Once the move is completed the Railroad shall forever cease operation of its freight business on or immediately adjacent to College property except to use the track.

If the Railroad cannot acquire the railroad line between Carlisle junction and Gettysburg from the Commonwealth, it shall still proceed ahead on the foregoing terms if the Commonwealth agrees to a relocation of the tracks.

This letter is intended solely as a vehicle to set forth the intentions of the parties, and it is not intended to be a legally enforceable or binding agreement. It is fully agreed and understood that the matters contemplated herein are subject to a number of contingencies, some, but not all of which, are:

SWOPE, HEISER & McQUAIDE

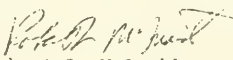
Sloan Cornell, President
Daniel J. Sweeney, Esquire
Page 3
April 19, 1988

- (i) The U. S. Government Park Service conveying certain lands to the College;
- (ii) Various federal, state and local governmental approvals;
- (iii) Negotiation of a definitive Agreement, reduced to writing, approved by the Board of Trustees of the College and executed by its appropriate officers; and its approval by the Railroad's Board of Directors, and its shareholders, and its execution by the Railroad's appropriate officers.

Pursuant to the foregoing understandings, the College shall immediately undertake to value the Railroad's property for the purpose of making an offer. The Railroad shall, with due diligence, negotiate with the Commonwealth of Pennsylvania for purchase of the aforesaid railroad line.

Very truly yours,

SWOPE, HEISER & McQUAIDE


Robert L. McQuaide

RLM:met

cc - William VanArsdale, Gettysburg College

Exhibit # 14

LAW OFFICES
 MCCARTHY, SWEENEY & HARRAWAY, P. C.
 1750 PENNSYLVANIA AVE., N. W.
 WASHINGTON D. C. 20006
 TELEPHONE (202) 393-5710
 TELECOPIER (202) 393-5721

DOUGLAS M. CANTER
 JOHN M. CUTLER, JR.
 WILLIAM I. HARRAWAY
 STEVEN J. KALISH
 HARVEY L. REITER
 DANIEL J. SWEENEY

CHARLES J. MCCARTHY
Counsel
 HARRY L. ALBRECHT
Of Counsel

May 3, 1988

William Van Arsdale
 Sloan Cornell
 Robert L. McQuaide

Gentlemen:

This is to serve as a memorandum of our discussion at the Railroad's office last Friday.

Realty. Sloan has applied to the State to purchase the state and federal (FRA) interests in the entire line in order to be in a position to sell to the College the property within its campus. After purchasing, the Railroad is to remove the track and structures from the property sold to the College. Removal will be without charge to the College, but the Railroad may keep the salvaged materials, including the old station for removal purposes. The present office building will be conveyed to the College. Also conveyed will be certain real property along Constitutional Avenue which the Railroad now owns. The College has offered to pay the \$10,000 fee, which Railroad must pay the State to have the property appraised for sale. A quitclaim deed from the Railroad will be acceptable.

New Right of Way. The College will arrange a swap with the National Parks Service to acquire and convey to the Railroad a 50 ft. right of way extending from the railroad line to be retained by the Railroad to a connection to be made with CSX near the Stadium, including land for a wye near that connection. The College is to pay for the cost of constructing this new railroad line which is roughly estimated as 3,000 ft. x \$50 per foot plus fill and grading. Upon closing on the "Realty" described in the prior paragraph, the College will grant to Railroad a lease of that property to continue railroad operations until this new track and connection are completed.

Page two
May 3, 1988

New Station. In order to establish a new station and parking area for passengers of the Railroad, College will grant a long term (99 years) lease to Railroad at nominal rent (\$10 per year, net/net) of the old Station on Washington Avenue and adjacent property for parking, extending back to and including the Creek. It is estimated that this will provide parking for 90 cars. The College has offered to pay for paving the parking area as well as for restoring the station to its earlier condition as a passenger station. The college will also agree to designate a nearby college parking area for use as overflow parking for passengers to be used as needed, with notice being given to the College by the Railroad of its use. If the leased property ceases to be used for railroad purposes, then the lease would end.

CSX. Trackage rights must be obtainable by Railroad from CSX to operate between the new Station and the connection with the new tracks near the Stadium. Also, CSX is to extend to Railroad either a contract for purchase or an option or right of first refusal on the CSX line from Gettysburg to Hanover.

Governmental Action and Approval. In order to accomplish this proposal, prior cooperation, action and approvals will be needed from various governmental agencies. PennDOT will have to agree to sell the present railroad to Gettysburg at a reasonable appraised price. The Federal Railroad Administration will have to release the property or otherwise lend its approval to that sale. The National Parks Service will have to make the land swap of the 50 ft. right of way to the Railroad in exchange for a scenic easement to be granted by the College. Congressional action will be needed to authorize that swap. The ICC will have to issue an exemption order or other appropriate authorization for the prospective operation over CSX tracks, relocation of the connection with CSX and the relocation of the Railroad's tracks from the present location to the new right of way. Environmental authorization and/or acquiescence must be obtained from the EPA and/or the appropriate Pennsylvania environmental agency for relocating the tracks, etc.

Monetary Consideration. In order to compensate for the relocating, the extensive work involved, the displacement of the Railroad from its present site of business, legal and other related expenses, etc., the College is expected to pay the following compensation:

Page three
May 3, 1988

Displacement and Incidental Expense	Fee	\$200,000
Existing Buildings		350,000
Construction of new right of way	est.	150,000
Grading and fill for right of way		?
Restore Wash. St. Station		50,000
Pave parking area incl. Creek		100,000
Appraisal fee to State		10,000

The College will also make a commitment to Railroad for certain financing to be used for and secured by the prospective purchase of the Gettysburg-Hanover line from CSX.

Best regards,


Daniel J. Sweeney

DJS/cpm

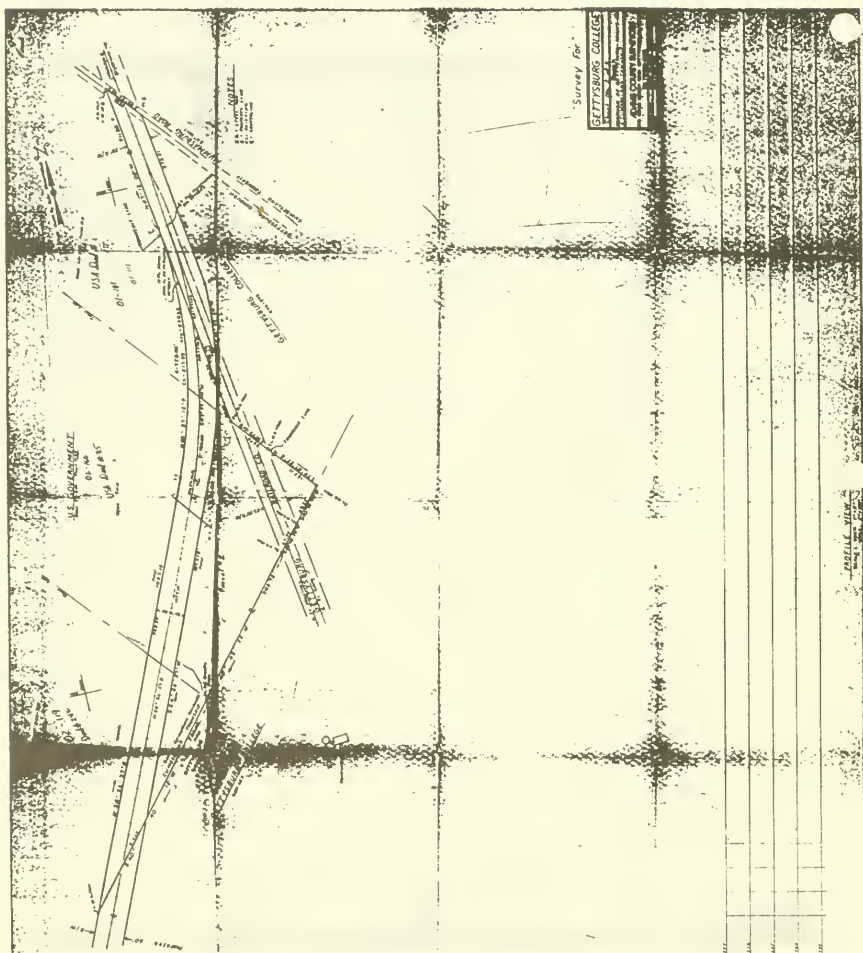
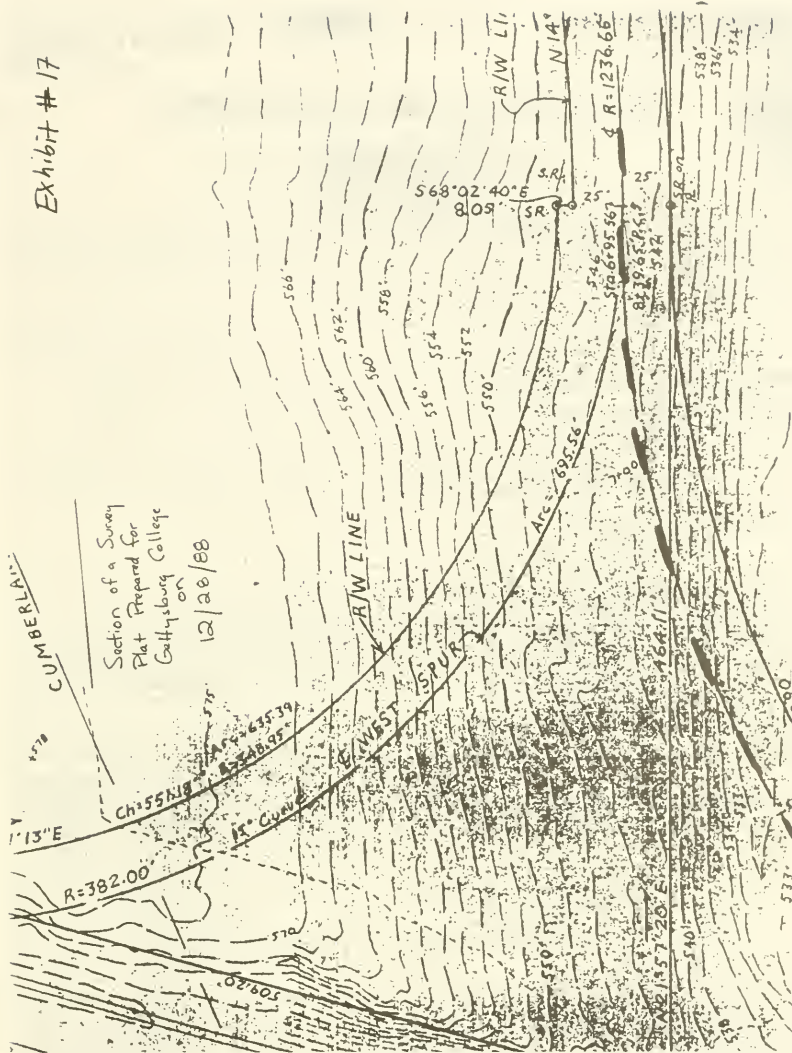


Exhibit #17

CUMBERLAND

Section of a Survey
Plat Prepared for
Cattensburg College

12/28/88





IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
MID-ATLANTIC REGION
U.S. CUSTOM HOUSE, ROOM 251
2ND & CHESTNUT STREETS
PHILADELPHIA, PA 19106

H30 (MAR/CRM)

August 6, 1990

Memorandum

To: Superintendent, Gettysburg National Military Park

From: Chief, Resource Planning and Preservation, Mid-Atlantic Regional Office

Subject: Transmittal of Federal Archeological Resources Protection Act Permit

Enclosed please find a copy of the approved Federal Archeological Resources Protection Act (ARPA) permit for archeological testing for the land conveyance with Gettysburg College for your files

John W. Bond
John W. Bond

Enclosure

GETTYSBURG NMP & NC EISENHOWER NHS	
AUG - 7 '90	
Superintendent	
Asst. Supr.	
Ch. Admin.	
Ch. I&VS	
Ch. R&MVP	
Ch. Maint.	
Ch. Cult. Res.	
Library	
Curator	
Res. Mgmt. Insc.	
Asst. Ch. I&VS	
Int. Spec.	
Supv. VC	
Supv. CC	
Supv. FICE	
Supv. PALB	
Supv. R.T.P.	
Personnel Asst.	
EO Chatterbox	
File	

Year of
the
Visitor

Please use this number
when referring to this permit
No.: 90-91

DI Form 1927 (June 1988)
GMB No. 1024-0037
Approved through 6/30/91

UNITED STATES DEPARTMENT OF THE INTERIOR

FEDERAL ARCHAEOLOGICAL RESOURCES PROTECTION ACT PERMIT

To conduct work upon public and Indian lands owned, controlled or held in trust by the Department of the Interior under the Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 721, 16 U.S.C. 470aa-ll) and its regulations (43 CFR 7).

1. Permit issued to:
R. Christopher Goodwin & Assoc. Inc
2. Under application dated:
07-30-90
3. Name, address and official status of person:
 - a. In general charge:
R. Christopher Goodwin
337 East Third St. Frederick, MD 21701
 - b. In actual direct charge:
Christopher Polglase
same address
4. Activity authorized:
Shovel testing of tract identified in application, Gettysburg National Park
5. On lands described as follows:
Described in Exhibit B: Tract -02-127- - - - -
6. For period:
August 01, 1990 to August 31, 1990
7. University, museum or other scientific or educational institution in which the materials collected under this permit will be deposited for permanent preservation: (A copy of a current, valid curation agreement must be kept on file with the land managing agency(ies).)
Gettysburg National Military Park

3. Special conditions:
This permit is subject to the provisions of the Archaeological Resources Protection Act of 1979, its regulations (43 CFR 7) and special conditions (see reverse side).

2. Preliminary report: Within approximately 6 weeks of the conclusion of field work, a preliminary report of work performed under this permit, illustrated with representative photographs and listing new and significant collected materials, should be furnished to:

Superintendent, Gettysburg National Military Park

0. Signature and title of approving official:

Regional Director

11. Date: 8/2/90

Paperwork Reduction Act Statement

This information is being collected to report on the results of archeological studies conducted on lands under the jurisdiction of the Department of the Interior. This information will be used to ensure that the work was conducted in accordance with statutory and regulatory requirements and any terms and conditions stipulated in the permit. Response to this request is required to obtain a benefit. The public reporting burden for the preliminary and final reports is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the reports. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, National Park Service, Washington, D.C. 20013 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

To: Gettysburg College

Gettysburg NYP

Interest to be Disposed: FEF

Area: 7.14 acres, more or less

Date: May 10, 1989 MARO

Tract 02-127

All that certain tract or parcel of land lying and being situated in the Borough of Gettysburg and in Cumberland Township, Adams County, Pennsylvania consisting of two (2) parcels and being more particularly described as follows:

Parcel 1

Beginning at a U. S. Monument on the northeasterly right-of-way line of the Western Maryland Railroad (now CSX Transportation Railroad) said monument being a corner common to the lands now or formerly of Gettysburg College and the lands of the U.S.A.; thence, leaving the lands of said College along said right-of-way,

North 53° 42' 55" West 509.20 feet to a point; thence, leaving said right-of-way along a new line through the lands of the USA the following six (6) courses:

- 1) Southeasterly along the arc of a curve to the left having a radius of 348.95 feet an arc distance of 394.86 feet (chord: South 86° 07' 58" East 374.13 feet),
- 2) North 19° 23' 40" East 455.66 feet,
- 3) North 78° 23' 40" East 80.00 feet,
- 4) Northeasterly along the arc of a curve to the right having a radius of 1075.63 feet an arc distance of 31.32 feet (Chord: North 06° 05' 25" East 31.32 feet),
- 5) Northeasterly along the arc of a curve to the right having a radius of 1664.44 feet an arc distance of 539.63 feet (Chord: North 14° 48' 31" East 557.00 feet) and
- 6) North 24° 26' 27" East 134.20 feet to a steel rod on the line of the lands now or formerly of said College; thence, with the line of the lands of said College the following three (3) courses:

- 1) South 17° 17' 45" West 555.76 feet,
- 2) South 73° 43' 50" East 119.73 feet and
- 3) South 21° 57' 20" West 919.31 feet to the point of beginning.

Parcel 1 containing 3.63 acres, more or less.

GETT
02-127

Parcel 2

Beginning at a U. S. Marker on the western right-of-way line of the Gettysburg Railroad right-of-way said marker being a corner common to the lands of the U.S.A., the lands of Gettysburg College and said right-of-way; thence, crossing said right-of-way and with the line of the lands of said College,

South 38° 58' 40" East 94.54 feet a U. S. Monument on the eastern line of said right-of-way; thence, leaving said right of way and continuing with said College, South 39° 07' 55" East 125.11; thence, South 40° 38' 00" West 89.25 feet to the eastern line of said Railroad right-of-way; thence, leaving the lands of said College and crossing said right-of-way, South 40° 48' 30" West 67.35 feet to the western line of said right-of-way and other lands of said College; thence, with the other lands of said College the following two (2) courses:

1) South 40° 42' 55" West 342.72 feet and
2) South 40° 40' 15" West 500.00 feet to a U. S. Monument; thence, leaving the lands of said College along a new line through the lands of the U.S.A. the following two (2) courses:

1) North 24° 26' 27" East 922.99 feet to a steel rod and
2) Northeasterly along the arc of a curve to the left with a radius of 950.00 feet an arc distance of 524.63 feet (Chord: North 08° 37' 15" East 517.99 feet) to a steel rod on the line of the lands of said College and the western line of the said railroad right-of-way; thence, with said College and said right-of-way, South 07° 12' West 427.54 feet to the point of beginning.

Less and excepting from said Parcel 2 the following described portion of the Gettysburg Railroad Company right-of-way:

Beginning at a U. S. Marker on the eastern right-of-way line of the Gettysburg Railroad right-of-way said marker being a corner common to the lands of the U.S.A., the lands of Gettysburg College and said right-of-way; thence, leaving the lands of said College along the line of the lands of said U.S.A., South 06° 59' 10" East 165.26 feet to a U. S. Marker said marker being a corner common to said right-of-

GETT
02-127

way, the lands of said U.S.A. and other lands of said College; thence, leaving the lands of said U.S.A. and crossing said right-of-way, South 40° 48' 30" West 67.35 feet to the western line of said right-of-way and other lands of said College and of the USA; thence leaving the lands of said College and with the lands of the U.S.A., North 07° 01' 31" West 290.63 feet (Computed) to a U. S. Monument; thence, leaving the lands of said USA and crossing said right-of-way with the lands of said College, South 38° 58' 40" East 94.54 feet to the point of beginning.

Parcel 2 containing 3.51 acres, more or less, after said exception.

Tract 02-127 containing in the aggregate 7.14 acres, more or less.

NOTE: The description for Parcels 1 and 2, Tract 02-127, was derived from a Plat for Gettysburg College dated March 14, 1989 prepared by Adams County Surveyors, 776 Good Intent Road, Gettysburg, PA 17325.

The above described parcels designated as Tract 02-127, Gettysburg National Military Park is a portion of the same land acquired by the United States of America by the following deeds

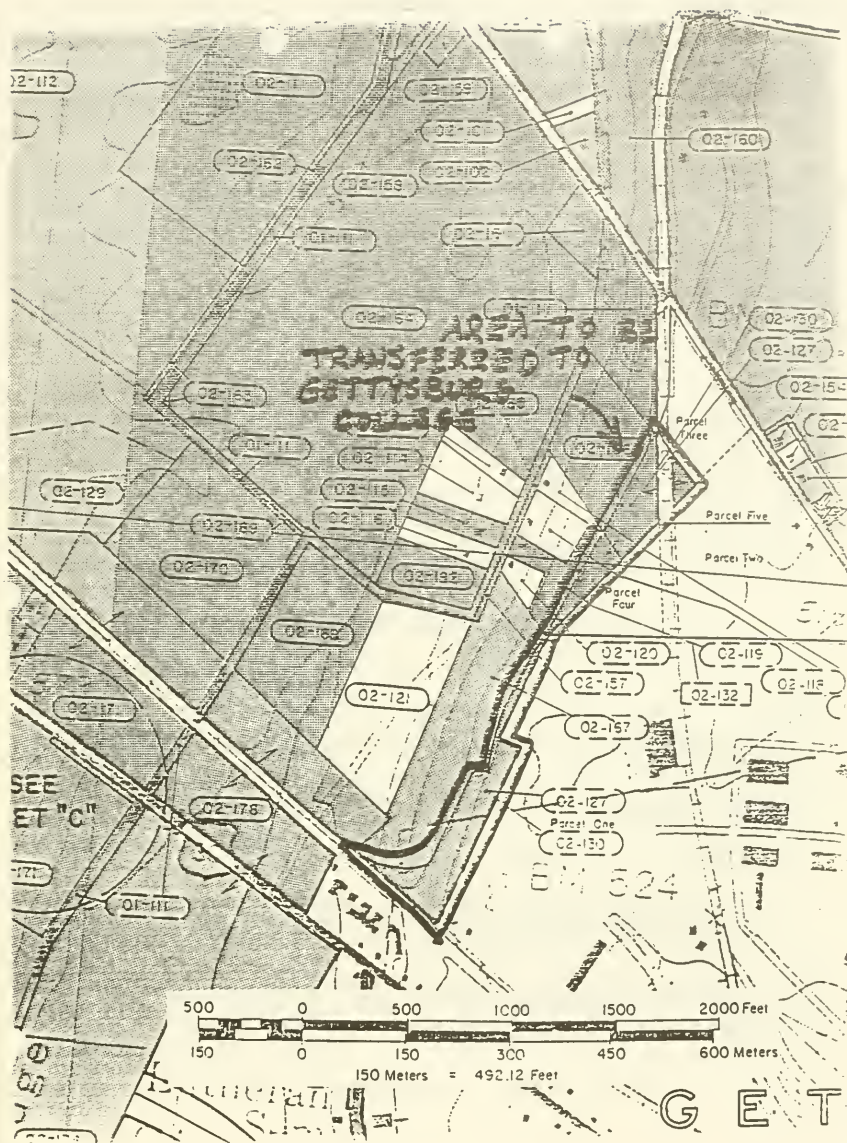
DB 65, Page 574 (USA Deed #116)

DB 344, Page 888 (USA Deed #242)

DB 56, Page 246 (USA Deed #85)

DB XX, Page 149 (USA Deed #1)

all of the above referenced deeds are recorded in the Recorder's Office, of Adams County, Pennsylvania.



9. (CONTINUED) special conditions are checked (X) as appropriate to this permit

- a. ☒ This permit shall not be exclusive in character, and there is hereby reserved unto the landowners the right to use, lease or permit the use of said land or any part thereof for any purpose.
- b. ☒ Other institutions may be engaged in archeological research in the general area covered by this permit. In case there should be conflict with respect to a site not specifically designated in a permit, the parties concerned shall reach agreement between themselves as to which shall work the site.
- c. ☒ The Department of the Interior, including its bureaus and employees and the landowners and their grantees, shall be held blameless for any and all events, deeds or mishaps, regardless of whether or not they arise from operations under this permit.
- d. ☒ Such guidance and protection as is consistent with duties of the Department of the Interior official in charge of the area will be afforded the permit holder and his party.
- e. ☒ Transportation in Department of the Interior vehicles cannot be furnished, except in cases where no extra expense to the Department is involved.
- f. ☒ All costs shall be borne by the permittee.
- g. ☒ The exploration or excavation of any Indian grave or burial ground on Indian lands and reservations under the jurisdiction of the Department of the Interior is restricted solely to qualified archeologists. No grave or burial ground abandoned less than 200 years may be investigated without permission of the governing council of the Indians concerned, which supplemental authority must be promptly recorded with the superintendent or other official in charge of the designated area.
- h. ☒ All excavated areas shall be restored by filling in the excavations and otherwise leaving the area in as near to original condition as is practicable.
- i. ☒ The permittee shall conduct all operations in such a manner as to prevent the erosion of the land, pollution of the water resources, and damage to the watershed, and to do all things necessary to prevent or reduce to the fullest extent the scarring of the lands.
- j. ☒ Any findings of mined or processed precious metals or other treasure or treasure trove in the area covered by this permit are the exclusive property of the landowners, and shall not be disturbed or removed from the site without specific written permission from the Department of the Interior.
- k. ☐ Two copies of the final report, accompanied by a completed NTIS report documentation form (optional form 272), will be submitted to the _____.
- l. ☐ Before undertaking any work on lands administered by the Bureau of Reclamation, clearance should be obtained from the official in charge of the area.
- m. ☐ Before undertaking any work on lands administered by the National Park Service, clearance should be obtained from the superintendent in charge of the area.
- n. ☒ Before undertaking any work on lands administered by the Bureau of Land Management, clearance should be obtained from the Office of the State Director and from the BLM District Officer in direct charge of the area concerned.
- o. ☐ Before undertaking any work on lands administered by the Fish and Wildlife Service, clearance should be obtained from the Office of the Regional Director and from the Refuge Manager in charge at the appropriate Fish and Wildlife Refuge. Possession or use of firearms in such areas is prohibited.
- p. ☐ Before undertaking any work on Indian tribal lands or on individually owned trust or restricted Indian lands, clearance should be obtained from the Bureau of Indian Affairs official having immediate jurisdiction over the property.
- q. ☒ Other special conditions continued on attached sheet(s).

I. SCOPE OF WORK

The Contractor shall provide the necessary personnel, facilities, supplies and materials to complete an archeological survey at Gettysburg National Military Park in accordance with the attached specifications and the Contractor's work plan.

II. TASKS

A parcel of land comprising approximately 7 acres is to be deleted from the Park boundaries of Gettysburg National Military Park and transferred to Gettysburg College in exchange for other considerations. This elongated land parcel is somewhat irregular in shape but is approximately 2500 feet in length and averages about 150 feet in width. The Gettysburg College proposes to relocate a railroad line to run the length of this land parcel, and to construct a railroad maintenance building there. Under the terms of the land exchange agreement, these are the only construction activities to be permitted.

Under the terms of the National Historic Preservation Act. Sect. 110, Guidelines the area to be exchanged must be surveyed for possible archeological resources. Because under the terms of the exchange agreement this land parcel will be protected other than in the excepted construction areas, this survey will concentrate upon those areas. There is no record of historical structures in the area, although some debris from the Gettysburg battle is to be expected. There is a potential for encountering prehistoric remains.

The Contractor will undertake the following tasks:

1. Sixty shovel tests shall be excavated at 50 foot intervals along the center of the routes for the proposed relocated railroad line, its spur line, and its adjacent siding. Each shovel test will be a uniform 1.5 feet in diameter and will be excavated to archaeologically sterile soil. All tests shall be excavated by natural stratigraphic units where feasible, otherwise by 4 inch levels, and all fill shall be screened through $\frac{1}{4}$ " hardware cloth sieves. All recovered artifacts are to be retained and recorded according to provenience. Stratigraphic records are to be kept for each test.
2. An east-west transect including at least 3 shovel tests excavated to the above specifications will be executed across the northern, wider end of the parcel.
3. An additional 8 shovel tests excavated to the above specifications shall be evenly placed within the 60 foot by 160 foot rectangular area where the proposed railroad maintenance building is to be sited.

The Contractor shall catalog each object selected for full

cataloging with the identifying letters and numbers as designated by the Park Curator. Each object or lot shall then be cataloged to the standards as set forth by the NPS Museum Handbook. Any directions supplemental to the NPS Museum Handbook shall be provided by the Regional Curator and/or Regional Archeologist and/or Park Curator. The National Park Service will provide all necessary forms. The NPS will retain possession of all work sheets and associated material which results from the cataloging process. The most significant objects shall be photographed according to the procedures in the NPS Museum Handbook; the Contractor will furnish photography equipment (including the specified black and-white film) and provide developing, and the NPS will retain possession of all negatives and prints. The Contractor shall also provide an item count of objects cataloged.

Field books, inventory sheets, reports, correspondence, maps, drawings, photographs, slides, and other associated documentation will be cataloged according to standards set forth by the NPS Museum Handbook with supplemental directions provided by the Park Curator. The National Park Service will provide all necessary forms and acid-free folders. No. 2 lead pencil will be used to mark folders. The NPS will retain possession of all work sheets and associated material which results from the cataloging process. The Contractor also shall provide an item count of items cataloged.

All catalog cards shall be entered by the Contractor into a computer using the Automated National Catalog System (ANCS) that has been developed by the NPS. Both the artifacts and associated documentation shall be entered into the computer, and a supplemental system using dBase III Plus shall be used to provide greater detail about the documentation.

The Contractor shall use ANCS catalog work sheets furnished by the NPS for drafting catalog data; these sheets shall be the basis for data entered into the computer.

All work and files shall be done so as to be fully compatible with said program (ANCS) and reproducible on the following hardware/software combination:

ANCS
dBase III Plus
DOS 3.3

All work is to be accomplished using Contractor-owned or Contractor-leased hardware. The Contractor may not use funds from this contract to purchase hardware; the Contractor may, however, lease hardware with funds from this contract.

The completed file transfer from the Contractor's hardware/software to the NPS hardware/software shall be accomplished by the Contractor. The file transfer shall be accomplished using hardware and a tape backup unit fully compatible with the NPS-owned equipment.

At no additional cost to the government the Contractor shall be responsible for providing technical support to correct any data errors, program operational errors, malfunctions, or other flaws on the files for a period of one year after the contract is completed.

III. DELIVERABLES

The Contractor shall deliver the following within 10 days of completion of the field investigations:

1. A typed summary report containing major findings.
2. A typed final report describing in detail the research program, field methodology and excavation results. Twenty copies of the final report will be provided to the NPS at the conclusion of work. Six copies of the report will include photographic print copies of all illustrations similar to the original. The report shall include plans, sections and photographic prints (not photocopied photographs) of field data and, if needed, scaled drawings of artifacts. The illustrations included shall be of sufficient quantity and quality to amplify the various sections of the text. As a minimum, the report will include (1) a master plan of the site indicating the location of all excavation units (detailed portions of the master will also be provided if the scale of the master is too small); (2) a plan and section of each excavation unit, except in cases where extensive repetition renders such data superfluous. The report will include the Contractor's estimation of the property's archeological significance and recommendations for further action. The report shall include a complete inventory and catalog by field provenience of all artifacts recovered during the excavations (to be included as an appendix to the report).
3. The archeological materials recovered during the contract period shall be catalogued using the Automated National Catalog System.
4. A complete set of catalog cards.
5. All original records produced during the investigation, including field notes, maps, and photographs.

PERIOD OF PERFORMANCE

The field excavations will be initiated within two weeks after the awarding of the contract, and shall be completed within 30 days.

The summary project report will be submitted to the Regional Archeologist and the Superintendent within 10 days of completion of the field phase. The summary report shall contain detailed summary conclusions illustrated by graphics when needed. The final

report shall be submitted within 30 days of completion of the field phase to the Contracting Officer's Technical Representative (COTR). All original records produced during the investigation, including field notes, maps and photographs, shall be submitted to the COTR at this time, and the artifacts shall be returned to the Park by this date.



O *Exhibit 30* O *Exhibit #19*

United States Department of the Interior
NATIONAL PARK SERVICE

GETTYSBURG NATIONAL MILITARY PARK
P.O. BOX 1080
GETTYSBURG, PENNSYLVANIA 17325-1080

EISENHOWER NATIONAL HISTORIC SITE
P.O. BOX 1080
GETTYSBURG, PENNSYLVANIA 17325-1080

IN REPLY REFER TO:

March 8, 1991

I. B. Sinclair
30 W. Third Street
Media, Pennsylvania 19063

Dear Mr. Sinclair:

I will try to respond to your letter of February 19, 1991, concerning the issue of the land exchange between Gettysburg College and the National Park Service as reported by Mr. Jerry Russell in his December 1990 issue of the Civil War Round Table Associates. I have tried to ignore Mr. Russell's ramblings because they are at best uninformed and at worst ill-intended. However, because you are a resident of Pennsylvania and demonstrated some knowledge of the Gettysburg NMP, I will give you facts which Mr. Russell ignores or does not recognize.

First of all, the exchange of lands was brought about by the recent legislation to expand the boundary of the park, specifically P.L. 101-377, signed August 17, 1990. The legislation was the culmination of a several-year boundary study to establish a definitive boundary for the Gettysburg NMP.

The boundary study in addition to adding several tracts of lands, totalling about 2,000 acres, proposed to delete eight small tracts from the park because of either management considerations or decreased site integrity. It added that some of the deleted areas would be used in land exchanges in order to protect adjacent privately owned lands within the proposed park boundary; adding specifically that this option would be relevant for two of the areas listed - Park/College Boundary and Colt Park. The bottom line of this proposal was that these eight areas once deleted would no longer be part of the park, they were to be



legislatively excluded from the park. This was the key point of the proposal. And despite later protestation that people had not known what would happen to the lands once deleted - that was rather a mute point at that time. The National Park Service had announced its intentions to delete those lands from the Park and that was sufficient for someone to raise questions at the time. I can assure you that everyone on the park's staff was aware and informed about the proposed deletions. In addition all environmental compliance requirements were followed. To believe as Mr. Russell suggests that any federal agency, and in particular the National Park Service would avoid such compliance is ludicrous and naive. For your information, the compliance is required by Section 106 of the National Historic Preservation Act of 1966. In addition, the boundary study also complied with the requirement of the National Environmental Policy Act of 1969.

The specifics of the proposed exchange of lands with the College goes back a few years. The College has for many years tried to deal with the safety problems ensuing from the location of a rail line across the western end of their campus separating it from some playing fields. Park land abutted the College at that end. Some years ago the College approached the park and proposed an exchange of lands in order to relocate the railroad. They offered to donate a development easement on 47 acres of their land on the northern end of their college, undeveloped land which has historical significance as part of the first day's battle, in exchange for 7 acres (not 8 as Mr. Russell claims) of park land abutting the west end of their campus. It was on these 7 acres that the railroad would be relocated.

Contrary to Mr. Russell's report, the area of the exchange with the College is not the historic Railroad Cut, scene of the first day's battle. That historic landmark is quite some distance to the west of the area in question. Mr. Russell is correct in his statement that an archeological survey, another required compliance detail, of the 7 acres was completed and nothing of significance was found. Contrary to Mr. Russell's report, however, the archeologist was not only provided with a plan of the proposed relocated railroad line but was personally briefed by professional staff from both the Regional Office and the park.

Regarding the question on my qualifications for the job of Superintendent, I will not defend my personal qualifications to Mr. Russell or anyone else. Suffice to say, I would not be in this position if I were not deemed qualified.

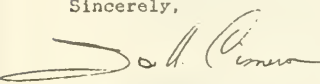
I do accept the responsibility for dealing with the controversy resulting from the land exchange because it did happen on my watch - as Mr. Russell puts it. I do find some solace in the fact that other Superintendents, some who perhaps fit Mr. Russell's idea of qualified, initiated the planning to protect additional battlefield resources and reviewed and concurred with the exchange with the College as one element of the boundary study.

In response to your direct statements, I like my position and I am doing my job. Gettysburg NMP is the premier Civil War site in the country. And as such it is subject to considerable oversight from a myriad of constituencies, all well intended and welcomed. However, when unfounded reports such as those fostered by Mr. Russell clouds that oversight, everyone suffers, the public because of the gross misinformation received and the National Park Service because of questions raised about its integrity and its credibility.

Concerning your remarks about our deer situation, I would invite your participation as we begin the long process of developing a plan to manage our increasing deer population. I would prefer to hear your suggestions now and not later when a plan perhaps not to your liking is developed.

I hope that I have given you some facts which were missing in Mr. Russell's Digest. Your conclusions are your own.

Sincerely,



Jose A. Cisneros
Superintendent



Gettysburg College

Gettysburg, Pennsylvania
17325-1485
(717) 337-6800Office of
Public Relations*Exhibit # 20***To: Faculty, Administrators and Staff****From: Bill Walker, Public Relations****Date: February 1, 1991**

Several members of the campus community have asked me questions about the College's response to articles and letters regarding the railroad relocation. The document printed below is a copy of an op-ed article I prepared for the newspaper, and I thought that you might like to see it.

Gettysburg College and the Railroad Relocation

Over the last two weeks, several articles and a letter to the editor of the Gettysburg Times have expressed concern about the relocation of the Gettysburg Railroad line that presently cuts through the campus of Gettysburg College. As most readers probably know, the track is being moved to the base of Oak Ridge, and the relocation necessitates an enlargement of the cut that presently goes through Oak Ridge behind Larson's Motel.

This railroad cut is not the one that figured prominently in the first day of the Battle of Gettysburg; that cut is approximately 1000 feet to the west. There is no record of fighting on the portion of Oak Ridge in question, but because the construction is taking place near an area where a Confederate battery was stationed during the remaining part of the battle, several individuals have raised questions which we want to address.

Why did the College want to move the rail line? Currently the track separates one-third of our campus from the other two-thirds and presents a number of safety problems to the students and faculty who on a daily basis must cross the tracks to get to the playing fields and athletic facilities on the west side of the track.

By moving the track to the base of Oak Ridge, we hoped to open the western portion of our campus for further development. If this area had not been made available for safe and convenient use, the only alternative site for new buildings or activities would have been the area verging on the site of the first day's battle on the north side of the borough. To us, using the northern site for further campus development seemed to be a less attractive alternative -- historically speaking -- than the option of moving the track. Therefore, we initiated conversation with the Gettysburg Railroad and the National Park Service aimed at moving the track to the west.

What did the public gain from the relocation of the track? To secure the 7 acres of land along the base of Oak Ridge, the College gave the

National Park Service a scenic easement in perpetuity for the 47 acres of land stretching from Carlisle Road on the east to just beyond Mummasburg Road on the west. This means that the College will never be able to build any structures on the land and will use the property only in ways that will not interfere with the interpretation of that part of the Battle of Gettysburg.

In addition, the College agreed to provide a screen of trees and plantings along the eastern border of the railroad right-of-way so that the campus and town would be shielded from the sight of rail equipment and facilities. Fast growing trees and evergreens will be placed in this area as soon as construction is complete.

Did Gettysburg College follow the proper procedure for approval of the relocation? After the railroad, Gettysburg College, and the National Park Service reached general agreement, we began in 1985 a five-year-long series of meetings, hearings, and procedures designed to ensure that the public's rights were observed and that the National Park Service was adequately compensated for the 7 acres along the base of Oak Ridge.

As a result of these procedures, the arrangement was reviewed by the Pennsylvania Public Utilities Commission, Pennsylvania Historical and Museum Commission, Pennsylvania Department of Transportation, Pennsylvania Attorney General's Office, Interstate Commerce Commission, Federal Railway Administration, Gettysburg National Military Park, National Park Service, Department of the Interior, and Congress, and was ultimately signed into law by the President as a part of the National Park Boundary Bill.

As anyone who has been through an IRS audit can readily understand, such a review by multiple agencies is quite rigorous. A key part of the procedures was an examination of the area for archaeological features of significance. According to established procedure, the College chose a qualified archaeological firm from a list of organizations approved by the National Park Service. The firm conducted the survey in the summer of 1990.

Did those who conducted the archaeological survey have the detailed map they needed to do a thorough job of looking for features? The archaeological review is made up of several steps, including interviews with officials who may have significant knowledge of the site in question; a review of the current plans, maps, and documents about the site; research into books and historical material which may be applicable; and, when appropriate, physical excavation at significant points.

The archaeologist who reviewed the railroad relocation followed all these steps. Officials at the Gettysburg National Military Park and the National Park Service were interviewed about their knowledge of the area. The College provided the archaeologist and other agencies a detailed plan of the site and all other relevant documents which clearly indicated the course of the western spur of the railroad which ultimately necessitated the enlargement of the cut through Oak Ridge.

Finally, the archaeologist made 65 excavations of the area. Included were 10 made on the centerline of the course of the westward spur of the track. One modern land feature -- a depression of unknown origin -- was found between the eastern and western spurs of the new rail line, but the archaeologist concluded that it was a recently made feature.

The archaeologist found one Minie ball and a few other fragments, and those were given to officials of the National Park Service and were catalogued for their collection.

As a result of all the field investigation, archival research, and interviews of authorities, the archaeologist concluded that, "Neither the historic materials recovered nor the feature [described above] possess [sic] the quality of significance as defined by the National Register of Historical Places criteria. No further archaeological work is recommended."

On the basis of this study, the railroad was given approval to proceed with the project. After reviewing the situation, the Pennsylvania Historical and Museum Commission and the National Park Service concluded that the College acted in compliance with all of their regulations.

Was there opportunity for public review and comment?

Opportunities for public review and comments were provided by five public hearings in Gettysburg on the Boundary Bill held from March 1988 to September 1988. At each of these meetings, interested citizens could express their views of the transaction to NPS officials. College officials attended four of these meetings to respond to any questions, but none was asked. Over the course of these hearings and many times since, area newspapers have carried numerous stories about the situation.

Could the western rail spur have been made at a sharper angle so that it would avoid Oak Ridge? Because of the long and heavy loads carried on the railroad, the spur could not have been placed at a sharper angle. Because it contains no tunnels or restricted passages, the Gettysburg Railroad is a critical link in the nation's strategic rail system and often carries military freight.

The record clearly shows that Gettysburg College proceeded in a proper manner. We followed all applicable procedures, complied with all requests for information and maps, hired an independent archaeologist to conduct an intensive study of the area, obtained the proper approvals for construction, agreed to provide a visual screen for the new railroad area, and replied to all inquiries. Above all, we have provided value (in terms of the scenic easement on 47 acres of land) for the 7 acres of land we received.

We undertook all of these activities in good faith, not only because this is our duty under the law, but more importantly because we value our historic heritage.

Handwritten notes from the files of
William Walker, Gettysburg College

X Jose Reed Engle Robin LePine
Barbara Baratti Charles Kierman & Amy
B McG Bell

Exhibit #21

Agenda

Railroad Meeting

June 10, 1993

I. Status Report on Work in Progress

- A. Engineering Plan for Soil Subsidence
- B. Site Preparation Work and Schedule
- C. Planting Plan and Schedule
- D. Need To Move Sequentially

Need to send copy
of SDC's to NPS

Survey on June 15 for soil
compaction, completed
after that date
Site 21 - well exposed, inside
3 if construction has
opening date - July 16
construction - Aug & Sept

NPS - clarify

II. Issues To Be Addressed for PUC Resolution

- A. Soil Subsidence Plan
- B. Third Rail Line - curative clerel - this is one item
- C. Color of Engine House
- D. Road Composition and Site

? will there be planting
54 copies for NPS
1 copy for

III. Additional Issues To Be Resolved

- A. Storage on Site
- B. Parking Lot
- C. Fence
- D. CSX Switch

*

Robin -

(2)

what College is asking for is beyond the scope of the original offer - GC is asking for more == storage parking - in curative deed we can only do as much as original offer - to do more, we must do a new deed - only way to do this and avoid suit by GBPH is to do a new deed - Robin says that this is the quickest way (to do a new deed)

Bob

curative deed - to permit construction of house + lines

new deed - to work in the ~~old deed~~ other things (storage & parking) + trees

Park Service wants top soil and grade to support vegetation in the triangle

Bob admits that original deed says that we could not remove vegetation from triangle

Bob agrees to get the shed and tracks in now, and then resolve the other issues

Robin - Road = not in deed - across through college property by plowing field - but it does seem logical to have road

Parking lot = why does it need fence for temp parking? Sounds like permanent storage,

Kirwin — those are the three issues that we see — admit that road and parking lot are necessary — but we don't accept storage — 10' gravel road?

Reed Engle — gabions are highly visible — is there a possible suit here for visual obstruction

GAH:

Gravel road
Parking only — no heavy equip parking
Says: payback to fence problem
I am concerned about storage — could there really have been no discussion of this?

Kirwin — says that there was no discussion

R. LaPace — under no circumstances will the NPS accept storage — must be returned to vegetation — and we will insist that this will extend to the ~~area~~ land in the triangle that was originally owned by the college.

84-003 166

24

Bob - we will have to look for other space - CMH we will review our options; we also don't want storage that's unsightly

security fence - Kevin - they don't have a fence - CMH - they do have vandalism

Bob - we need to have some depiction of this

José - concerned with junk cars on the track - ~~and~~ Bob - old junk cars are to be gotten rid of - head thinks that the old cars are parts cars to be scrapped

Bob - If we end up with no fence and no storage area, do we need a new deed (admitting that we need a curative deed for the add rail lines)?

Kevin - they would like to add the color of bldg - also height of bldg - build in a up-sloped structure height + road and parking

84-003 167

(5)

Kenneth — gravel is a structure
 Robin — creative deed: "there shall
 be no development of the land"
 only mention? house & kitchen —
 even the detailed map doesn't
 show a road — the house cannot
 be included in a creative deed

Bob — we would be opening up a new
 can of worms to go to a new
 deed

Robin — the process is routine: two
 compliance again. NEPA; this
 isn't an EIS — but it is an EA
 deal = the RD signs; very rarely
 there are public hearings & public
 comment
 106 — the other process — use
 the same form

★
 ★
 ★
 Gerald Kenneth — need a new exchange —
 lower bldg — more land in
 existing boundary

Robin — dark gravel rather than white
 utilities up — rather than on poles

(6)

Robin - may not be able to do
gabion wall w/o compans

XX Robin - suggested that the words
"right of way" can be used to
include a road if it is in ^{side} the
area of the R of W on the maps

UAM - clarify need for parking - 1-17
to accept current use -

- ① we clarify some issues
- ② Letter
- ③ No fence - storage -
parking
- ④ Road compaction, erosion
control & soil subsidence
- ⑤ Can we communicate with
them about the issues we
agree on

Bob - would be willing to agree
on ~~size~~ height, restoration,
buried utilities, color of
shed, color of gravel

need - Walt also is insisting on

(7)

La Pave - Cathy Grease Harrison has
been asked for deposition
by local council - NPS

Kerwin - connection deep:

- ① new plat for add. tracks
- ② utilities sig
- ③ bldg a certain height
- ④ road no more than 10' wide
- ⑤ no storage recorded

Brenda - fence was mentioned
in Sloan Cornell's testimony
to PWC.

Robin - need a reaffirmation of
perpetual commitment to
soil subsidence

they will discuss "right of
way" implications & use

we (cc) should discuss "parking
with Sloan - + building height + ^{landscaping}
need to review gabion work & ^{landscaping}
come to meeting - but needs

(8)

Kerwin - If we get all done - we would like to extend scenic easement

Bob - Park Service did the survey and it was less than what we thought it would be - we pointed this out to Boyd Sponagle - and he confirmed where it ~~was~~ was

Kerwin - did not want to get too close to Pres ~~off~~ House

Bob - We've got PWC out there - can we get this off dead center -

Robin - we've identified issues that we need to work on - resolve in their needs

(1) engineering - down

(2) pouring - as talk w/ Council

(3) term of "right of way" - NA

2-3 weeks we can give you a written summary

don't look for a final, signed document

(9)

GAH - are we actually arising at a
 final agreement? - but we
 can't do some of the work
 until PLC rules

Brenda - just a letter indicating
 the direction in which we are
 moving

Jose - give us 30 days and we may
 be able to give you this

Exhibit # 22



United States Department of the Interior

OFFICE OF THE SOLICITOR
One Gateway Center, Suite 612
Newton, MA 02158-2802

December 8, 1993

MEMORANDUM

TO: Fred Herling, Outdoor Recreation Planner, NPS-MARO
FROM: Robin Lepore, Office of the Solicitor, NE *RL*
SUBJECT: Chronology of Events Regarding the Land Exchange at
Gettysburg NHS

Attached is a factual history which I developed from documents provided by the Service and discussions with Service employees as part of our litigation involving this land exchange.

The Battle of Gettysburg took place on July 1-3, 1863. It was the key turning point in the war for the Union Army as it was the last Confederate offensive in the northern states. President Lincoln's Gettysburg address, delivered on July 4, helped to coalesce national resolve to maintain the Union. Therefore, the political significance of the battle in some ways overshadows its military significance.

Efforts to preserve the battlefield began in 1864 when the Gettysburg Battlefield Memorial Association began to acquire land and veterans organizations began to erect monuments commemorating the battle. The Gettysburg National Park was created by federal law in 1895. The law directed the acquiring lands shown on a map prepared by Major General Sickles and adjacent lands deemed necessary to preserve the important topographical features of the battlefield. The Sickles Map identified 3874 acres of land within specific tracts that the federal government should acquire. Due to the authority to acquire adjacent lands, the actual acquisition area was imprecise and the perimeter area totaled 15,360 acres. By 1933, the government owned 2350 acres of land and continued to acquire lands as they became available. In 1973, Congress became concerned about the uncertainty of the federal acquisition goals at Gettysburg and several other parks which did not have clear boundaries. In 1974, an "understanding" was reached with the Senate Appropriation Subcommittee that no lands outside of the limited area could be acquired. The limitations of this "understanding" were challenged in 1986 when the Gettysburg Battlefield Preservation Association (GBPA), plaintiffs in this action, attempted to donate lands to the Park Service which were outside of the limited area. This effort led to a statutory directive, passed in October 1987, instructing the Park Service to conduct a boundary study and to report to Congress regarding the

"final development" of the Park. (For a more detailed summary of these events, refer to the August, 1988 Boundary Study/Draft Report to Congress/Environmental Assessment [hereafter Boundary Study/EA]).

Even before this legislation was signed, the Park Service began work on the boundary study process. A Boundary Study Planning Team was formed, Jonathan Doherty, a park planner with the Service's Regional Office in Philadelphia became the Project Leader, and five staff members from the Park were on the team, see page 59 of the EA. Initially, areas which had been identified in the Park's 1982 General Management Plan as critical areas that would have an impact on the park if developed or were listed by the staff historian in 1986 as "critical" for protection were reviewed. These lists formed the basis for the team's proposals. The 11th Corps line area appeared on these early lists and maps as a critical area to be acquired.

As Jonathan Doherty explained in an affidavit prepared for the litigation, initial briefings in June 1987 were conducted with some two dozen political officials, agencies and organizations, letters of invitation were sent to all adjacent non-federal landowners, press releases were issued, and the State Historic Preservation Office (SHPO) (here the Pennsylvania Bureau of Historic Preservation) was informed. The plaintiff's were included among the key public participants and received all the newsletters and mailings. Five public workshops or meetings were held from July 1987 to September 1988, newsletters and press releases were distributed to a mailing list of 800, bus tours were conducted and individual meetings and briefings were conducted with at least thirty-four landowners. Mr. Doherty held an individual meeting with the GBPA on December 13, 1988.

As the Boundary study/EA explains at pages 17-20 a primary park objective is to provide the opportunity and the interpretation necessary for visitors to understand the battle of Gettysburg through seeing the actual battlefield. It is important to protect the historic setting of the battlefield, as viewed from the park. Future land uses could destroy unprotected historic resources and therefore it is important to protect significant sites from future development.

The planning team developed four assessment criteria to determine the significance of areas suggested for inclusion within the park. These were Cultural resource significance, Interpretive importance, Visual significance, and Management feasibility.¹ Each

¹The Boundary Study/EA states at page 25 that:

ASSESSMENT CRITERIA

The resources described and mapped on the preceding pages cover a broad area in and around Gettysburg. In order to evaluate

this information and identify resource areas of particular importance to the protection and interpretation of the battlefield, assessment criteria were developed. These criteria were applied to all resources and land areas identified on the preceding pages, including those within the current park. The findings of this assessment are described in the next section.

Criteria used in the Boundary Study resource assessment are grouped into four categories. These are:

CULTURAL RESOURCES SIGNIFICANCE - an evaluation of a resource's historical significance based on:

1. the type and concentration of activity and tactical importance of battle related events which occurred there;
2. the association with specific individuals of unique importance to the battle at Gettysburg;
3. the concentration, intrinsic value and site specific nature of commemorative monumentation in the area;
4. the current historic integrity of existing resources, including both the integrity of the immediate site or object and integrity of the setting of the resource.

INTERPRETIVE IMPORTANCE - a characterization of the area's value for interpreting events, positions, movements, battle participants or themes based on:

1. the ability of the area to contribute to a visual understanding of the overall battle;
2. the ability of the area to convey an appreciation of and information on battlefield features and events not currently covered in the interpretive program.

VISUAL SIGNIFICANCE - an evaluation of the area's importance in maintaining the quality of the visitor experience and an avoidance of modern intrusions upon the setting of the battlefield and other cultural resources, based on:

1. visibility from park avenues;
2. importance in maintaining cultural resource significance;
3. adequacy or feasibility of screening land uses outside the park which are incompatible with the battlefield;
4. visual compatibility of area's current land use with the battlefield.

MANAGEMENT FEASIBILITY - an evaluation of an area's function and management feasibility, based on:

1. proximity to the existing park;
2. law enforcement, resource protection and access considerations;
3. provision of services and development identified in the park general management plan and other operational documents.

These criteria were presented at the third Boundary Study public workshop in November, 1987.

area slated for inclusion was analyzed against these criteria. The 11th Corps line was evaluated in accordance with this process. (See Doherty affidavit.)

The Boundary Study's ultimate recommendations included the addition of 14 areas, totaling about 1900 acres, the deletion of eight areas totaling about 25 acres, and implementation of cooperative approaches to preserve sites, land forms and monuments outside of the new boundary.

The principal focus of the public meetings, Congressional debates and public comments involved other areas of the boundary other than the acquisition of the 11th Corps line or the transfer of the railroad strip. Some of the other areas generated substantial public attention. Other major topics addressed in the public review process were issues like the use of condemnation, loss of local tax revenues, and removal of the Gettysburg National Tower. Generally, public attention was not focused on the 11th Corps line exchange until construction was underway in January, 1991 although there was some press coverage of the exchange in 1989, see below.

An introductory letter was sent to all neighboring landowners (including the College) on June 17, 1987 and the first public boundary study meeting was on July 8. Park Service records indicate that on July 30, 1987 William VanArsdale, Director of Development for Gettysburg College, came to the Park and met with Superintendent John Earnst, the park historian, Kathy Harrison, and others, to discuss a possible land exchange involving the 11th Corps line. The land identified as the 11th Corps line was Gettysburg College property and was presently used as college playing fields. This area had key historic value as the last Union position before its retreat on July 1, 1863 and was occupied by Confederate troops during the rest of the battle. Also, it is visible from many of the other interpretive sites on the north side of the Park and on Oak Ridge. The land which was ultimately exchanged lines on the eastern down hill side of Oak Ridge, east of "Sheads" Woods. Oak Ridge runs essentially north-south rising from an elevation of about 520' on the College playing fields to about 580' along the crest, and dropping more gradually to about the 540' elevation to the west. Seminary Ridge which played a key part in the fighting is located south of Oak Ridge, and some of the plaintiffs' statements regarding Seminary Ridge are inaccurately applied to Oak Ridge. It is the same geographical feature but the two are separated by U.S. 30 and a railroad cut which was in existence in July 1863. Tracks were laid through the cut in 1885. The tracks now form part of the major east-west line running from Baltimore, which will be referred to as the Western Maryland line.

Bisecting the College property and continuing north through the 11th Corps line area are tracks owned by the Gettysburg Railroad. In 1987 these tracks joined the western Maryland tracks close to Town. It was the College's 1987 proposal to move the

north-south track about 1500 feet west to the ar of the Park/College boundary.

As Superintendent Earnst explained to me, this proposal seemed to him to be a win-win situation. The College was offering to convey restrictive easements to the Park over the 11th Corps line which would ensure that the open character of the area would be retained and that College development would not encompass these lands. From the perspective of the park visitor or the interpretive sites, which are all north or west of the new rail lines, the railroad would not be visible. Obviously, it is still visible from the College's property but Superintendent Earnst felt that if the College preferred it to be out of the center of the College, then that was a College decision. Since the Park objectives of preservation of open space character and preservation of the historic setting of the battlefield, as viewed from the Park, were being achieved, he felt that the exchange was advantageous for the Park. As no objections to the proposal were raised by the staff planners or historians, the proposal went forward.

We now recognize that through a series of unwitting events not all members of the Park Service staff fully understood the ramifications of the exchange. After discussing this issue with many of the NPS participants, I cannot conclude that these misimpressions were intentional misrepresentations on the part of NPS, as the plaintiffs contended, but at worst, bureaucratic miscommunication, and certainly within the scope of the agency discretion.

After Mr. VanArsdale's initial July 1987 meeting with Superintendent Earnst, Kathy Harrison visited the railroad strip site with Mr. VanArsdale and the park planner Fred Eubanks on August 6, 1987. Mrs. Harrison recalled that Mr. VanArsdale assured them that the tracks would run at the base of the hill in the northern portion of the federal land and along a plateau at the southern portion (approximately the 540 foot contour line which runs through the center of the deleted land on the southern piece). She recalls that he assured them that no large trees would be cut without prior consent of the Park Service.

At a team meeting on October 5, 1987 with the Chief Historian of the Service and other Washington staff, the 11th Corps line exchange was discussed and Mrs. Harrison recalls noting that the right flank marker of the 13th Massachusetts Volunteers would have to be moved. The Chief Historian indicated that flank markers could be moved as long as the alignment remained the same.

The next key event in the 11th Corps line exchange was another meeting on December 16, 1987 at the site. Mr. VanArsdale, representatives from Penn Dot and the Gettysburg Railroad were present. Mrs. Harrison was ill and Mr. Robert Prosperi, a park historian attended. He recalls that the bulk of the discussion related to Penn Dot regulations, that references to the railroad's

location, if any, were that it would run generally at the bottom of the ridge. He was given a map which he brought back to the office and gave to Fred Eubanks, the chief planner. This map identified the proposed track routing, including the inverted "Y" at the intersection with the east-west line. It had been drawn on county tax maps, not topographic maps. He never compared it to a topographic map and does not remember ever showing it to Mrs. Harrison. The map has a handwritten notation which reads "Proposed Railroad Relocation, approx. 24001, 5 ac.+/- ." It is also dated "Rec'd Dec. 16, 1987."

By comparing the proposed rail line on the December, 1987 map with maps provided to the Service around the time of the exchange, it is clear that the track does generally run along the base of the hill, and that in order to intersect the Western Maryland line at its existing elevation and to have the track run along the plateau of the 540 contour, the southeast corner of the Oak Ridge have to be excavated.

However, since the historians did not make such comparisons, Mrs. Harrison, who served on the Boundary study team, apparently remained under the impression from her August meeting with VanArsdale that no topographical alternations except along the plateau would be made. Therefore, throughout the process of evaluating the historic significance of the site, drafting the text of the boundary study/EA, or advising Regional office staff about the significance of various areas, she was not personally aware that the track relocation would involve such extensive excavation at the southern end of Oak Ridge.

Mr. Eubanks is now retired. His recollection of these events is poor. He recalls the site visit and being assured about not cutting big trees but does not recall any maps of the proposal although he thinks he knew there would be a "Y" intersection. He retired on December 31, 1987. However, Mr. Doherty recalls later visiting the site, standing near the Western Maryland line and realizing that the hill would be excavated. Based upon Mrs. Harrison's assurances at the team meetings that this wasn't an area of historic significance, and knowing that the exchange would achieve the Park's objectives of preserving the openness of the 11th Corps line, Mr. Doherty told me that he operated under the impression that there would be no problems with the exchange.²

²Mrs. Harrison indicated to me that she had objections to the exchange, but not because of the railroad construction or because it was important for interpretation. During November, 1987, the College had been grading, filling and leveling the soccer fields. She felt that since this was an alteration of the historical terrain, that the historical integrity of the area was lost and that she opposed the idea of a land exchange and expressed her views to her superiors. Superintendent Earnst remembers her

As the Boundary study process went through public review, there was some press coverage of the proposal and only a single inquiry from the public about it. The relevant portion of the

criticism of the College's activities but recalls that he felt that the security of retaining an open character of the 11th Corps line as opposed to a possible construction of dormitories, etc. was a benefit for the government.

³PARTIAL TRANSCRIPT OF AUDIO TAPE RECORDING, BOUNDARY STUDY WORKSHOP, SEPTEMBER 14, 1988.

JONATHAN DOHERTY (moderator/NPS spokesperson): "... delete all or part of eight small areas that are no longer needed for park purposes for a number of reasons. Those total approximately 25 acres, and those are identified on the maps and they're so small that it's difficult for me to point them out. I'd be glad to talk about any of those that you have questions on."

Question and answer session:

- question by JIM COLE: Where will the railroad tracks be rerouted at Gettysburg College?

JONATHAN DOHERTY: "... to just within the existing park and continue up here, and essentially this would help facilitate that in a way that involves the minimal amount of park land that is not critical for interpretation."

JIM COLE: "What is being done to the railroad, is it being moved immediately to the side?"

JONATHAN DOHERTY: "It's being moved, it would potentially be moved approximately, a little less than a quarter of a mile to the west. And ... we would not be, that's not our action, it's a private action that's being taken by (inaudible) and the College."

GEORGE SHEALER: "Yeah, but that sounds like you're taking it off the College land and putting it on Government land."

JONATHAN DOHERTY: "Well, it's actually ..."

GEORGE SHEALER: "You're trading Government land, you're giving the College land, in other words."

JONATHAN DOHERTY: "It's essentially right along the park boundary. There's a small fifty-foot wide section in that area."

GEORGE SHEALER: "Of Government land."

UNIDENTIFIED: "Jonathan, would this affect the park adversely?"

JONATHAN DOHERTY: "Uh, no. We would tie the construction in with an archeological investigation that there are no known disadvantages."

GEORGE SHEALER: "The base of Oak Ridge, in other words?"

JONATHAN DOHERTY: "... Yes."

GEORGE SHEALER: "Basically the base of Oak Ridge."

conversation at the September 14, 1988 public meeting is below. Mr. Doherty indicated accurately that the scale of the map printed in the Boundary study/EA at page 29 or as displayed at that time on Map 305/80034⁴ was too small to be accurately identified. The final track essentially does run along the base of Oak Ridge and the archaeological investigation did not indicate any known disadvantages. Mr. Doherty's statement about fifty-foot section is essentially accurate in that the width of the track along the majority of the new line is 60 feet. But his statement was misleading in the sense that the land conveyed included the northern triangle east of the track and the "Y" shaped spur. Again, he indicated to the public that the land was not critical for interpretation.

The Land Resources Division (hereafter Lands) first became involved with the 11th Corps line exchange in 1988 when the College sent them copies of the College's deeds to prepare deed descriptions. As Mr. Kirwan indicates in his affidavit, he explained to Mr. VanArsdale that the Service could prepare all the initial documents - deed, easement terms, appraisals, etc., but that no exchange could be consummated until the legislation was signed. Also, since there was no appropriation to cover acquisition, his office could not pay for surveys or appraisals and, if the values were not equal, the Service could not pay cash to equalize the values.

On April 7, 1989 there was a meeting at Gettysburg College with Mr. VanArsdale, Mr. Kirwan and his staff, and Bob Davidson, Deputy Superintendent and Carol Fox, secretary to Superintendent Kuehn. They discussed many details of the exchange, visited the site, and received a map, dated March 14, 1989, sheets 1 and 2 showing the west spur running through the 550 foot contour line and encompassing 7.462 acres of government land in parcels 1 and 2. There was only one copy of this map which was later duplicated by Lands and provided to the Park. It was apparently never seen by Mrs. Harrison although Mr. Davidson had it at a later date. Mr. Davidson indicated to me that he knew of the routing of the tracks from his site visit and the maps but that he never really perceived what that would mean visually. His feeling at the time was that the government was getting a good deal in terms of gaining long-term protection over the College property.

The exchange did receive some media attention. In a June 14, 1989 article in the Gettysburg Times both the College and the Park

⁴The final map approved by Congress was based on 305/80034. The areas added by Congress were included and it was renumbered 305/80034B.

Superintendent, Daniel Kuehn, discussed the status of the exchange negotiation. The article states, "The superintendent stimated that about six or seven acres will be required by the college for the track relocation." In another interview, reported in the August 25 1989 issue, Superintendent Kuehn again mentioned the relocation of the tracks onto NPS property.

Legislation was introduced in Congress in September, 1989. Hearings were held in October. The plaintiffs testified in favor of the legislation and, along with other groups, supported the addition of several other areas.

Throughout 1989 the draft easement language was negotiated between the Lands office and the College, with review and comment by the Park. This process culminated in a meeting on February 28, 1990 at the Park attended by the Acting Superintendent, Mr. Davidson, Mrs. Harrison, Mr. Doherty, and the Lands officer, Mr. Boyd Sponaugle. Mr. Sponaugle recalls that the discussion focused on the restrictions on the College's use of its land and that the height of the building was discussed. He also recalls that Mr. VanArsdale had assured him that the line of trees between the track and the College would be retained to screen the building. Ultimately, this was not done. Mr. Sponaugle has indicated to us that it was evident to him that there would have to be cutting and filling to construct the line but that the conditions in the deed provided adequate protection through retention of vegetative screening. The deed states that the building is limited to 35 feet above ground level of the undeveloped land. The deed further provides that the project will not remove the "existing screen of trees and other vegetation located between the site and the facilities and the College" and that the College would take affirmative efforts to enhance growth of the screen by plantings to maintain the permanent nature of the screen. The terms of the deed were reviewed by Mr. Davidson.

The appraisal was completed and submitted on July 24, 1990 finding a value in the development rights of the College land to be worth \$233,750.00 and the value of the government's 7 1/2 acres to be \$130,000.00. Since the government had no appropriated funds, the College ultimately agreed to donate the \$100,000.00 difference to the government.

The archaeological study was conducted in July, 1990. The contract with the archaeologist was reviewed by Mrs. Harrison prior to signature. It detailed that 60 shovel tests would be made at "50 foot intervals along the center of the routes for the proposed relocated railroad line, its spur line, and its adjacent siding" with additional tests in the area of the proposed maintenance building. The map included with the contract clearly shows the configuration of the parcel and the contour lines. It was based on a Lands segment map.

During her review of the archaeological contract, around July 12 1990, Mrs. Harrison first understood the actual size of the

project. As stated above, copies of earlier maps had been provided to the park, some of which were later found in the possession of Mr. Davidson or other Park files but which apparently couldn't be located when Mrs. Harrison requested them. She had the December, 1987 map in her office at that time but, apparently, this was the first time she became fully aware of the layout of the project. She had conversations with her supervisor and the Regional Archaeologist about the size of the project area but apparently still did not perceive the extent of grading it would entail. Thus, when the archaeologist discussed the area with her on July 25, 1990, she told them that the proposed relocation would affect no known significant archaeological or cultural resources.

The final archaeological study, even more clearly maps the proposed railroad areas, as it identified the project area superimposed upon the a 1903 survey map of the Battlefield at Gettysburg which shows the project cutting across three topo lines. The report, dated August 6, 1990, reveals that one unfired mini ball was recovered in the southern area. No other archaeological materials were recovered in the adjacent areas and the archaeologist concluded that "Archaeological survey of the portion of Gettysburg National Military Park to be transferred to Gettysburg College showed that the proposed railroad line, spur, siding and maintenance building will not impact any significant archaeological resources, nor will they significantly detract from the ability of the National Park Service to interpret the events of 1-3 July 1863 to the public."

The boundary legislation was signed on August 17, 1990. (It is now codified at 16 U.S.C. § 430g-4-h-5.) The deed was signed on September 26, 1990. At a staff meeting on October 3, 1990 the Superintendent indicated that the flank marker would need to be moved soon and that the construction was scheduled to move ahead quickly. It was well underway by January 1991, apparently without any effort having been made by the Service to relocate the flank marker. No one supervised the construction or visited the site until public inquiries were made.

I hope this information is of assistance.

Exhibit # 23

ITINERARY
FIELD INSPECTION AT GETTYSBURG NATIONAL MILITARY PARK
SATURDAY, NOVEMBER 18, 1989

6 L

8:00 a.m.	--	Depart Rayburn Horseshoe via bus to Gettysburg
10:00 a.m.	--	Arrive Gettysburg - meet those people who have traveled to Gettysburg separately (coffee available)
10:10 a.m.	--	Orientation
10:30 a.m.	--	Depart Visitor Center to begin tour
10:35 a.m.	--	Drive by Washington St. Garage (National Park Service proposed deletion)
10:40 a.m.	--	Drive by Benner Farm (Gettysburg Battlefield Preservation Association proposed addition, and Jones Battalion Avenue (NPS proposed deletion)
10:55 a.m.	--	Drive by Hospital Woods (NPS Resource Area #14)
11:00 a.m. - 11:20 a.m.	--	Stop at East Cavalry Field (NPS Resource Area #13) Site of one of the largest cavalry battles of the Civil War. Off bus to view. (Visit GBPA addition - Cavalry Heights Trailer Park)
11:30 a.m.	--	Drive by 11th Corps Line (NPS Resource Area #2)
11:35 a.m.	--	Drive by Oak Ridge Tower Early's Line overlook (NPS Resource Area #1) Also drive by NPS proposed deletion/exchange of interests with Gettysburg College
11:45 a.m.	--	Drive by Herr's Ridge overlook (NPS Resource Area #3)
11:50 a.m.	--	Drive by Country Club Golf Course (Also NPS Resource Area #3)
12:00 noon	--	Lunch - Herr Tavern, 900 Chambersburg Pike (717) 334-4332
1:15 p.m.	--	Depart Herr Tavern, resume inspection
1:20 p.m.	--	Drive by 1st Shot Marker (NPS Resource Area #4)

Page 2

1:25 p.m.	--	Drive by Seminary Avenue. (NPS proposed deletion) and 1st Corps Line (NPS Resource Area #5) Visit Old Dorm at Seminary - proposed Pfanz maintenance agreement.)
1:30 p.m.	--	Drive by Pitzer Farm (NPS Resource Area #6)
1:35 p.m. - 1:45 p.m.	--	Drive through Eisenhower National Historic Site
1:50 p.m.	--	Drive by Emmitsburg Road corridor (NPCA proposed addition)
2:00 p.m. - 2:15 p.m.	--	Stop at South Cavalry Field (NPS Resource Area #7). Site of significant Union flank attack on July 3rd not currently interpreted.
2:25 p.m.	--	Drive by 20th Maine Monument (NPS Resource Area #8) and Howe and Wright Avenues (NPS Resource Area #9), U.S. 15 interchange/potential commercial development.
2:30 p.m.	--	Drive by Jacob Weikert Farm/Taneytown Road corridor (NPCA proposed additions)
2:40 p.m.	--	Drive by G. Spangler Farm (NPS Resource Area #10). Major Field hospital site.
2:45 p.m.	--	Drive by McAllister Hill Tract (Pfanz proposed addition) via Baltimore Pike
2:50 p.m.	--	Drive by Neill Avenue (NPS Resource Area #11)
3:00 p.m.	--	Drive by Military Museum (NPCA/Pfanz proposed addition) also Evergreen Cemetery Gatehouse (Pfanz proposed maintenance agreement)
3:05 p.m.	--	Drive by National Tower and Baltimore Pike corridor (NPS Resource Area #12) also NPCA/Pfanz proposed addition
3:10 p.m.	--	Drive by Colt Park tracts (NPS proposed deletion)
3:15 p.m.	--	Return to Gettysburg National Military Park Visitor Center
3:30 p.m.	--	Depart park for Washington, D.C.
5:30 p.m.	--	Arrive Washington, D.C. Rayburn Horseshoe

Participants on trip

Members

Congressman Bruce F. Vento
Congressman William Goodling
Congressman Peter Kostmayer
Congressman Austin Murphy

National Park Service

Regional Director James Coleman
Park Superintendent Frank Deckert
Assistant Park Superintendent Robert Davidson
NPS Chief Historian Edwin Bearss
NPS Planner Jonathan Doherty

Staffers

Heather Huyck (Subcommittee National Parks and Public Lands)
John O'Donnell (Kostmayer)
Jay Eagen (Goodling)
Kurt Christensen (Subcommittee National Parks and Public Lands,
minority)
James Bradley (Subcommittee National Parks and Public Lands)

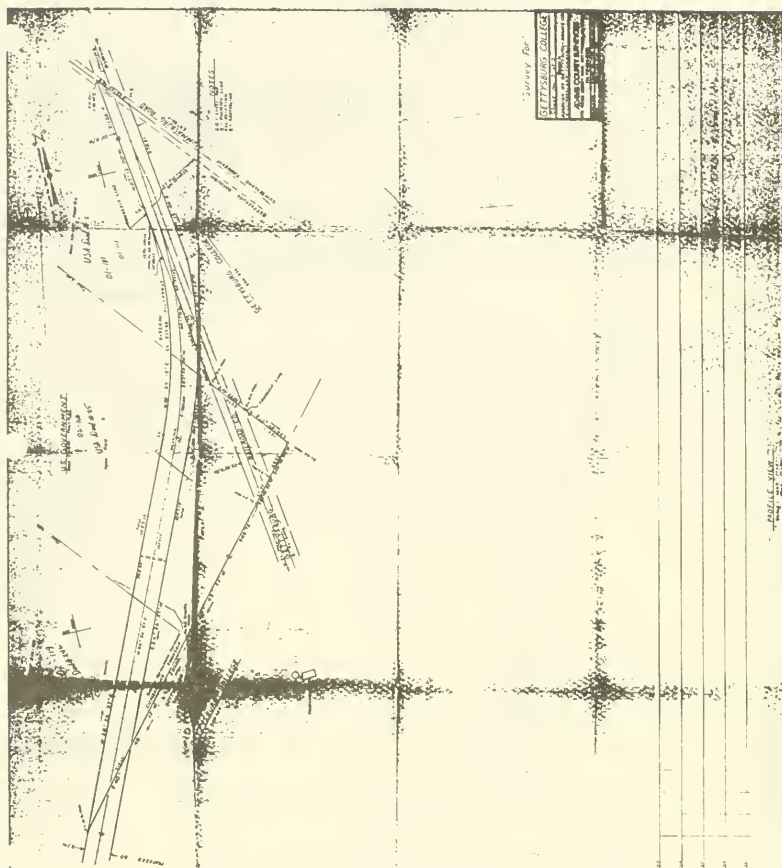


Exhibit #25

SWOPE, HEISER & McQUAIDE
ATTORNEYS AT LAW
104 BALTIMORE STREET
GETTYSBURG, PENNSYLVANIA 17325

TELEPHONE (717) 334-2134
FAX NUMBER (717) 334-8065

DONALD M. SWOPE (1913-1982)
HENRY O. HEISER, III
ROBERT L. McQUAIDE
ROY A. KEEFER
HAROLD A. EASTMAN, JR.

J. DONALD SWOPE (1907-1940)
SWOPE, BROWN & SWOPE (1940-1966)
BROWN, SWOPE & McQUAIL (1966-1982)
DONALD M. SWOPE (1958-1968)
SWOPE & FRAZEE (1968-1980)

July 20, 1992

U. S. Department of the Interior
Office of the Solicitor
One Gateway Center - Suite 612
Newton Corner, MA 02158-2868

ATTENTION: Robin Lepore

Re: Gettysburg Railroad Relocation

Dear Robin:

The president and treasurer of the College have asked me to draft a reply to your letter of April 7, 1992. I apologize for the long delay in responding. I agree with you that our meeting was useful, and I too hope and expect that all matters of concern between us will be resolved satisfactorily.

I will try to address the points you raise seriatim:

1. We will be happy to provide you with the requested copies of the two-page survey plan (the "Plan"). We will order them from the surveyor and send them under cover of a separate letter.

2. We do not believe an "as built" survey is necessary, and it would certainly not be cost effective. Of course, the N.P.S. may commission any such surveys it wants, but the College needs more justification before it will spend the money necessary for such a survey.

3. There are actually several matters addressed in this paragraph. Again, we fail to see the need for such detailed, and expensive, survey work. The building and the tracks are either installed, or will be installed, in a manner consistent with the Plan. The landscape work, gabions and access are discussed below.

4 and 5. The engine house will be installed in accordance with the Plan. Prior to installing the engine house we will consult with representatives of the N.P.S. concerning its location, height, etc., to insure that all parties agree that it is in conformity with the Plan. The Railroad has also expressed a willingness to consider color schemes which may be suggested by the N.P.S., even though the color of the building was never discussed in any negotiations or addressed in any legal document.

SWOPE, HEISER & McQUAIDE

Page 2
July 20, 1992

6. We agree that some remedial work may be necessary in order to address the potential problem of loss of support for lands of the N.P.S. which are adjacent to the railroad cut. We will engage the services of an engineer to make recommendations. Before erecting any gabion wall, or other corrective measure, the Railroad and the College will provide plans to the N.P.S. and get prior approval.

7. Your interpretation of the deed from the USA to the College is troubling to me. You assert, in essence, that if a right is not expressly provided in the deed, then the College and those claiming through the College do not have such right. The actual case is just the opposite. The College and those claiming through it have every right to use the land in any manner they may choose subject only to law and the express restrictions on development which appear in the deed.

The deed is quite explicit. The restrictions pertain to the construction of facilities, not to use. Also, in Pennsylvania, as in most jurisdictions, such restrictions, although enforceable, are strictly construed against the grantor. If you have any statutory law or case law supporting your interpretation, please provide it for my review and reconsideration.

Having set forth our legal position, I hasten to reiterate what we said in our meeting on this subject. The College is affected far more than the N.P.S. by the visual impact of the railroad use. We therefore see the N.P.S. and the College as having a mutual interest in controlling the scenic view. We will consult with the N.P.S. to that end.

We suggest that it is premature to attempt to make any final decisions now. We must wait until the engine house is finally located.

8. As with the other requests for a survey, we do not see the need. We have competent landscape architects who are ready, willing and able to design what is needed without such a survey. As with the railroad uses, it makes no sense to start any of the screening work until the issue of the engine house is resolved.

We will work with the N.P.S. on the screening, and welcome any help it can provide. However, we do this as a good neighbor and not because of any legal right of the N.P.S. that we recognize.

9. There are two basic issues raised in this paragraph. One addresses the construction of a facility not on the recorded plan (several sidings), and one addresses uses of the land. My response

Page 3
July 20, 1992

as to the uses is already set forth above in number 7, with the same promise that the College will do its best, as a good neighbor, to consult and reach a mutually satisfactory conclusion. However, until the P.U.C. rules and the engine house is placed, these issues must remain fluid.

The issue of the "additional" sidings is, from our perspective, somewhat more problematic and requires an explanation. The Plan formed the basis for the negotiated agreement by and among the Railroad, the N.P.S. and the College. The Plan, in its final form, as you will plainly see, includes the sidings to which you refer.

The Plan, however, is on paper which is too large to be recorded. The N.P.S. requested of me that the Plan be recorded. I, therefore, contacted the surveyor and asked him to reduce the Plan and place it on mylar so that it could be recorded. He did, but in the process omitted the sidings to which you refer. This omission was overlooked by the parties. Therefore, the Plan placed of record, and referenced in the deed, omitted the sidings by mutual mistake. We sincerely believe that the record should be amended to reflect the actual agreement, which is reflected on the Plan.

In support of this assertion, I would remind Jose Cisneros that he, Mac Heebner, Van and I had a meeting, at his insistence, on February 11, 1991, wherein he raised several concerns about the project. One of the concerns he expressed related to the number of sidings. We said that the number and configuration of tracks came right from the agreed upon plans. He then pulled from his file a copy of the Plan and confirmed to himself and to us that the number and configuration of tracks, as built, conformed with the agreed upon Plan.

10. At this time we see no need for any state or local permits. If any need becomes apparent, we will be happy to provide you with information concerning same, especially as they may affect the timing of the project.

We are of the belief that many of the issues between us will be easily and amicably resolved with the determination by the P.U.C. concerning the placement of the engine house. With the exception of dealing with the subsidence problem, we think it best to delay any final decisions, and action, until the engine house is resolved.

SWOPE, HEISER & McQUAIDE

Page 4
July 20, 1992

Thank you for your continuing cooperation.

Very truly yours,

SWOPE, HEISER & McQUAIDE



Robert L. McQuaide

RLM:met
cc - Daniel Sweeney, Esquire
Sloan Cornell
William P. Van Arsdale
Dr. Gordon Haaland, President
William Walker

Exhibit #27



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

Mid-Atlantic Region
143 South Third Street
Philadelphia, PA 19106



To: Chief of Maintenance, GETT

From: Supervisory Civil Engineer, MARO

Date: January 27, 1993

Subj: Site Visit - Seminary Ridge Railroad Slope Stabilization

Re: C.S. Davidson, Inc. drawings #2322504 and #2322504A, Sheet 1: Gettysburg College Seminary Ridge Railroad Cut Evaluation Site Plan - Slope Stabilization and Sheet 2: Gettysburg College Seminary Ridge Railroad Cut Evaluation Cross Sections - Slope Stabilization

PURPOSE

The purpose of this visit was to review the ongoing deterioration of a newly exposed slope face at the park's property line adjacent to the Gettysburg and CSX Railroad lines and to discuss possible solutions.

DISCUSSION

It is my understanding that the slope was cut back to facilitate the installation of a spur line by the Gettysburg Railroad in order for the Gettysburg Railroad to connect its track with the with the CSX Railroad. The original slope cut was performed by Gettysburg Railroad approximately 20 - 24 months ago with the permission of Gettysburg College. Subsequent to the initial slope cut, deterioration of the newly exposed slope face has occurred as would be expected. Along one stretch at the top of the slope cut the erosion was so severe that a section approximately 75 feet in length had eroded 6-8 feet into the Park's property. It is my understanding that no soil boring data is available for this area.

An unsuccessful attempt to stabilize a section of the unstable slope cut was made by the Gettysburg Railroad approximately 16 months ago by installing a poorly designed and constructed gabion retaining wall. The existing gabion retaining wall was apparently constructed using two gabion units deep for the bottom two courses and one gabion unit deep for all of the courses above. This solution was obviously ineffective in stabilizing the slope as a number of problems are evident. A section of the existing gabion retaining wall has settled as a result of inadequate bearing capacity of the strata upon which it rests most probably due to saturated cohesive materials below it. It was not evident to what

depth the base of the gabion retaining wall was placed but it was probably to a depth insufficient to achieve adequate bearing capacity. The existing gabion retaining wall is also bowing outward, away from the plane of the slope cut, indicating inadequate resistance to the lateral pressure component being produced by the slope and any fill materials behind the gabion retaining wall. While gabion retaining walls properly constructed using the right materials will accommodate the types of deformations evident at this installation, the poor performance of this particular gabion retaining wall after such a short period of time does raise the question as to the long term integrity of the installation. The gabion units were not inspected for deformation of the individual units which generally results from the shearing action which takes place within a gabion wall structure. The existing gabion retaining wall was not inspected for lacing of the gabion units.

Due to the ineffectiveness of the existing gabion retaining wall and the continued deterioration of the unstabilized sections of the slope cut, additional slope stabilization work is now being proposed. The additional slope stabilization work is detailed on the reference drawings. Essentially the proposed work consists of a new gabion retaining wall which is approximately 150 feet in length. The three bottom courses of the new gabion retaining wall are proposed to be 3 gabion units deep with five courses of gabion units above each being two gabion units deep and topped off with one course of gabion units being one gabion unit deep. In addition a 500-foot long section of the cut slope is proposed to be stabilized with "granular" fill topped off with 6" of topsoil constructed to a slope of 1.5H to 1V. A 95-foot long section and a 65-foot long section of the cut slope, indicated as "stable" shale and shale cut respectively, are not indicated to be stabilized on the reference drawings.

A review of the reference drawings yields the following:

1. The drawings do not address drainage at the base of the proposed gabion retaining wall, "stable" shale cut and shale cut. Field inspection of the site indicates ponding water at the toe of the cut slopes as well as at the gabion retaining wall. The water is a result of surface drainage as well as subsurface drainage through the seams of the shale materials. The lack of drainage will become worse in the future when the Gettysburg railroad is tied into the CSX line unless proper drainage accommodations are provided.
2. The size of the gabion units as well as the mesh configuration must be specified.
3. The geotextile fabric related to the gabion retaining wall must be specified. There are many different types available from a variety of manufacturers on the market. A geotextile suitable for the intended use must be indicated. In addition the placement of the geotextile is not indicated on the reference drawings. This should be shown. The specification for the geotextile could be tightened up very easily by reference to the PADOT Specifications - 1990, Section 735 - Geotextiles.

4. The notes on the reference drawings indicate "all fill/backfill shall be placed in loose lifts....." and ".....shall be tested.....to insure proper moisture content and the degree of specified compaction." The degree of compaction is not specified in the reference drawings. The degree of compaction as determined in accordance with the appropriate ASTM test method such as ASTM D1557 should be specified. The notes should also indicate that each lift should be thoroughly compacted to the specified density. The notes should also indicate the number of samples and density tests required for each lift or number of cubic yards placed in addition to an acceptable test method such as ASTM D1556, ASTM D2922, etc.

5. The notes indicate that the backfill at the gabion retaining wall will be on-site soil. A quick approximation indicates that 1700 cubic yards of suitable backfill material may be required. Will this quantity of suitable backfill material be available on-site?

6. The reference drawings indicate the base of the gabion retaining wall to be set approximately 6" below grade which will be the basis for the Contractor's price. What is the likelihood of achieving the minimum 6000psf bearing capacity at 6" below grade?

7. The drawings do not indicate the removal and proper disposal of the existing gabion retaining wall. If the intent of these drawings is to provide all new materials for the construction of the proposed gabion retaining wall then this should be clearly indicated. If any parts of the existing gabion retaining wall are to be salvaged for use in the new structure then this should be specified.

8. Since the drawings are not intended to be used for the installation of the new sections of railroad tracks as well as for the proposed Engine House, these items should be labeled not-in-contract, i.e., NIC.

9. The notes indicate that any unsuitable materials at the bottom of the gabion are ".....to be replaced with acceptable material and compacted as specified hereinafter under fill/backfill." The criteria as to what constitutes a suitable material should be specified. There is also a concern about differential settling along the length of the proposed gabion retaining wall if removal/replacement of some material under the base occurs and it is an intermittent phenomenon. The specification for compaction under the fill/backfill note is not suitable for compaction under the gabion retaining wall. An appropriate degree of compaction such as 100 percent of the laboratory maximum density when tested in accordance with ASTM D1557 would be more suitable to preclude excessive future settlement of the gabion retaining wall.

10. Some wording should be put in the notes relative to having the contractor maintain the slope and make all repairs until an acceptable stand of grass is established. Due to the steep slope it is likely that erosion will occur before it is properly stabilized with vegetation. This depends of course on the weather.

11. The drawings show two storm sewers terminating under the new fill material. Do these storm sewers drain this area and if so what modifications are required?

12. The stabilization approach still raises a concern in that stabilization is not being performed for the highly fractured shale or the area labeled "stable" shale. While these areas are more stable than some of the adjacent fine grained materials that are being stabilized, the use of the term stable as it pertains to this application is relative. The highly fractured shale is clearly unstable in a long term sense. Though it will not deteriorate/erode as rapidly as some of the adjacent materials along the slope, it will continue to deteriorate due to weathering, freezing and thawing. This also applies to the area labeled stable shale cut. While this area appears more stable than that highly fractured shale it is interlaced with seams of highly fractured shale and clay materials. In light of this it would be prudent at this time to also address the stabilization of these two sections and take advantage of the built in economies of already having a contractor on-site performing stabilization work as well as the difficulty of working in these areas in the future after the rail spurs and the Engine House are constructed. While it is not critical at this point in time, stabilizing these areas most certainly warrants serious consideration.

RECOMMENDATIONS

Whichever slope stabilization scheme is finally implemented it should adequately address the potential loss of the Park's property. The slope stabilization scheme as currently proposed on the reference drawings is far better than the originally constructed gabion retaining wall, however it is not the best solution for the Park. There are several solutions to this problem and the cost of each must be evaluated along with the pros and cons. Any of the following would be suitable fixes in preventing any future slope deterioration if properly designed and installed:

- o Gabion retaining wall
- o Steel H-piles with concrete lagging
- o Concrete gravity retaining wall

The structures above are listed in order of the expected increasing cost and longevity. The question of permanence is of obvious concern and should be addressed from a life-cycle cost perspective. If the current solution is being dictated due to a current shortfall of funds then perhaps some sort of a contract and/or escrow agreement which would guarantee the replacement of the structure in the event of future failure might allow the installation of a less permanent lowest first cost solution, i.e., gabion retaining wall, while providing both parties with peace of mind. Aesthetics is another issue which should be addressed as with time one can expect the gabion retaining wall to support the growth of weeds and other plant life which depending on your perspective can be considered quite unsightly. Consideration may be given to slope stabilization by way of

suitable fill at an appropriate slope, however I believe that this would require a relocation of the existing railroad tracks. The costs for this scheme should be evaluated to determine if it would be a cost effective solution. It is possible that this alternative may be eliminated as it may not leave sufficient grounds for future plans which the Gettysburg Railroad may have.

Kenneth Sulkowski

KJS:kjs

Exhibit # 33



DEPARTMENT OF THE ARMY
MILITARY TRAFFIC MANAGEMENT COMMAND
TRANSPORTATION ENGINEERING AGENCY
720 THIMBLE SHOALS BOULEVARD, SUITE 130
NEWPORT NEWS, VIRGINIA 23606-2574

REPLY TO
ATTENTION OF

February 17, 1994

Office of Special Assistant
for Transportation Engineering

Mr. Brian McLaughlin
House Subcommittee on Environment,
Energy and Natural Resources
Committee on Government Operations
Room B371B
Rayburn House Office Building
Washington, DC 20515

Dear Mr. McLaughlin:

This is in regards to your telephone inquiry yesterday concerning the defense importance of rail lines in the vicinity of Gettysburg, Pennsylvania.

The Military Traffic Management Command (MTMC) is responsible for the Department of Defense (DOD) interest in civil sector rail lines. Under the MTMC/DOD Railroads for National Defense (RND) Program established in 1976, this office designates civil rail lines important to national defense. Approximately every three years, these lines are reviewed for their capability and readiness to meet current DOD requirements.

Our 1993 report, Civil Rail Lines Important to National Defense, reflects current designated lines (enclosure). Rail lines in the vicinity of the historic Gettysburg battlefield are not designated important to national defense (page 57). This is also true of RND past and anticipated future status of the Gettysburg lines. The nearest designated defense line is Conrail between Hagerstown, Maryland, and Harrisburg, Pennsylvania, some 25 miles west and north of Gettysburg.

I trust this will satisfy your request for a formal record of our conversation.

Sincerely,

H. Duke Niebur
Senior Civil Engineer
Railroads for National Defense

Enclosure



Exhibit #36

APR 26 1988

Gabor S. Boritt
Robert C. Fluhler Professor
of Civil War Studies
Director, Civil War Institute
Gettysburg, Pennsylvania 17325

Gettysburg College

(717) 337-6555

April 26, 1988

M E M O

TO: VAN ARSDALE

FROM: GABOR BORITT *y.b.*

RE: BATTLEFIELD PRESERVATION

I have met today with the Board of the Gettysburg Battlefield Preservation Association concerning the work being done on the North side of the campus. As a minimum photographs and some surveys of those fields should have been taken before the work commenced there. I think the Gettysburg National Military Park should have informed you of this.

For the future, above all, the GBPA would like to keep channels of communications open with the college and would like to be given a respectful hearing when that seems needed. I offered to be in touch with them and would like you to inform me about College plans that effect the Battlefield. Both the Battlefield and the College (and its reputation) will be thus well served.

I had a good meeting with the Board of the GBPA and, I think, defused a potentially embarrassing blowup (with a possible anti-College p.r. campaign) in this 125th anniversary year. I promised to send you a memo about this meeting with a copy to the President.

Thank you very much for your consideration.

cc: President Glassick

memorandum

DATE: August 22, 1984

REPLY TO
ATTN OF: Archeologist Fairchilde

SUBJECT: Work Requests

TO: Superintendent

*Handwritten Copy
Fairchilde
Exhibit #37*

Due to an obvious ignorance of the methods, techniques, and procedures required for clearance and the way things are going concerning necessary clearance on projects in this park I feel required to draft this memorandum.

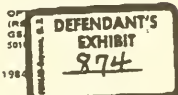
First of all, when I came here the better part of a year ago, I immediately went to work putting out brush fires - that is, I worked hard and cut many corners to clear projects that were explained to me as needing to be done "right now!" Well, things have not changed in the meantime. I am still getting requests to do clearances for jobs that need to be done "right now," and thereby forcing me to continue cutting corners.

I have asked many times, that we establish a program where planning of the activities that require archeological clearances be implemented. Also, I have requested over and over that when projects requiring archeological clearance are brought to my attention, that it be done in a manner allowing me some "lead time" so that I may include them into my planned program. Also, I have requested that a scope of work and a map of the proposed activity be included in the request for each archeological clearance. Instead, I am still trying to work through a truly unorganized, unplanned system. During the past week, I was given four more projects requiring archeological clearance which must be completed within one or two weeks. Only one has a scope of work and a map attached. However, none of the proposed project areas has been flagged or staked.

This pattern is not uncommon here in the park. This pattern has been and still is contrary to NPS and DOI policies and procedures. (See NPS-28, NPS Management Policies, National Historic Preservation Act of 1966, as amended, EO 11593, The Archeological and Historical Preservation Act of 1974, The Archeological Resources Preservation Act of 1979, and the National Environmental Policy Act of 1969, as well as 36 CFR 60, 61, 63, 68, and 800).

As you can see, violation of 36 CFR 800 affects your compliance with the PMOA as expressed in the GNMP Park Management Plan. Therefore, in order for this park to be in compliance with established cultural, archeological and environmental mandates and policies, I am requesting that projects requiring archeological clearance be forwarded to me in the form of work requests, something like the one required by the Maintenance Division, including a scope of work, a map detailing the proposed project area, and the flagging or staking of the project area. Also, I am requesting that there be a lead time of at least one month per request. This action, of course, will require that contracted work be planned and that divisions or persons whose programs are affected by contracted work be involved in con-

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tracting activities, such as pre-planning activities and preconstruction meetings. Also, it will require my input in XXX Forms, etc. This course of action will also necessitate planning within the other park divisions.

The reason for this memorandum is twofold: I cannot get park activities into compliance with the way things have been handled to date and secondly, the lack of an organized park planning program is beginning to impart my professional integrity which, if continued, would have very serious consequence to my professional standing in the field of Archeology.

While not having any help at this time, I have neither the time nor the desire to teach methods, techniques, and procedures required for archeological clearance to park personnel. However, I stand ready to assist in developing a comprehensive park compliance program.

Jerry D. Fairchilde

cc: Regional Archeologist, MARO

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memorandum

Exhibit #38

DATE: September 10, 1984

REPLY TO: Regional Archeologist
ATTN OF:

SUBJECT: Gettysburg Trip Report - Covering visits to the Rose Farm on August 15, 1984 and August 30, 1984

TO: Regional Director, Mid-Atlantic Region
Through: Associate Regional Director, CRM *JWB:ML 9/10/84*BACKGROUND:

In the late afternoon of August 14, I received a call from Reed Engle (MARO) in Gettysburg. He had just visited the Rose Farm area where the SCS had been operating and thought I should know about it and come and observe the area personally. The seriousness of the situation merited a site visit and I so informed Reed Engle who was also to leave a message with the Acting Superintendent, Bob Davidson, that the archeologists would visit the park the next day. This was done.

SITE VISIT:

During the initial site inspection two damaged areas were observed. The first was the site of the Spring House. It had suffered from heavy machinery stripping and gouging. The extreme southeastern section of the Spring House was also seriously impacted and my later trip on August 30 confirmed that about 5" to 6" of cultural material bearing topsoil had been displaced. (See plates I and II). Two test units were dug on August 30 in this area and there appears to be untouched material in the lower strata.

Nineteenth century shards of cobalt blue decorated stoneware storage jars were discovered scattered throughout this area. The bank directly opposite from the Spring House was also stripped without benefit of monitoring and this is unfortunate since a suspected archaic aboriginal site may have extended spatially in this direction.

The main portion of the aboriginal site is located to the west of the Spring House itself. (See Plate III.) The area was surveyed by the Park archeologist and all concerned parties were so informed. This area also lacks credibility as a result of the unmonitored grading

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OPTIONAL FORM NO. 10
(REV. 1-68)
GSA FPMR (41 CFR) 101-11.6
5010-106

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and stripping. An additional late archaic projectile point was discovered here during my August 15th visit to the site. (See Plate IV.)

SPECIFIC ARCHEOLOGICAL DAMAGE

- A. Two previously surveyed archeological areas were subjected to ground disturbance without benefit of final testing or monitoring.
- B. The Historic Spring House and its surrounding area was impacted without monitoring or testing.
- C. The known perimeter of at least one aboriginal site was seriously damaged and its spatial extent probably lost.

SPECIFIC NON-COMPLIANCE ACTIONS

- A. The following statement is contained in the cover letter signed by the Superintendent:

In particular we will monitor the grading, ditching, reshaping, ripping and stump removal so that the historic contours, historic traces, and historic waterways will be preserved.

This was not adhered to since the previously surveyed areas were not monitored. The provisions of the Form XXX were not carried out.

- B. The previously surveyed area was not fully identified at the time of the ground stripping activity. No further testing prior to the activity was scheduled.
- C. The actions of the Park should have been reported to the Region at once since the provisions (especially Section 3(a)) of P.L. 93-291 clearly order the federal agency involved in such activities to contact the Secretary of the Interior. Since we were not informed we could not do so until regional staff reported the incident.

RECOMMENDATIONS

1. Form XXX's from Gattysburg must involve the park archeologist's participation when ground disturbing activities are clearly involved. The practice of not involving the park archeologist in their composition is not a sound one from the point of view of efficient cultural resource management.

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2. The park archeologist must be included in the park maintenance and resource protection program since his input is vital for the protection of subsoil cultural resources.
3. Regional archeological staff should be encouraged by the park and the region to work closely with the park archeologist in the implementation of his program.
4. Communication between the Region and the Park concerning the management of cultural resources should be open and professional.
5. Park staff should be encouraged to contact regional staff.
6. Park archeological Form XXX's will be cleared by Regional staff by on-site visit in the near future.
7. The role of the regional staff as "police" in such matters must be clearly addressed by Regional management and guidelines instituted and procedures formed. This will ensure a more professional operation and hopefully will eliminate park/region misunderstandings over Regional professional roles and obligations.

David G. Orr

David G. Orr

Attachments

- 1) Form XXX and cover sheet, September 19, 1963, for land and soil conservation project.
- 2) Memorandum from Superintendent (GTT) to Regional Director (MARO) August 22, 1984.
- 3) Memorandum from Park Archeologist to Regional Archeologist (MARO) August 16, 1984
- 4) Map of impacted area.

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